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Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

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F.C.C. 73D–61

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of ALL AMERICAN BROADCASTING CORP., OKLAHOMA CITY, OKLA. For Construction Permit	Docket No. 18954 File No. BPH–6288

APPEARANCES

Philip M. Baker, Esq., on behalf of All American Broadcasting Corporation; and *Theodore D. Kramer, Esq.*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JAMES F. TIERNEY

(Issued November 26, 1973; Effective January 22, 1974 pursuant to section 1.276 of the Commission's rules)

PRELIMINARY STATEMENT

1. On September 2, 1970, the Commission released its Memorandum Opinion and Order (FCC 70–917), designating the application of All American Broadcasting Corporation (hereinafter All American) for a hearing with four other applications for new FM broadcast facilities.[1] By an Order, FCC 71–347 released April 14, 1971, the Commission added another application to this proceeding. By June 7, 1973, the applications of all the applicants except All American had[2] been dismissed with prejudice or severed. The issues remaining against All American are the following:

1. To determine whether All American Broadcasting Corporation has available the $50,750 required for construction and first year operation of its proposed station without reliance on revenues to thus demonstrate its financial qualifications.

2. To determine the efforts made by All American Broadcasting Corporation to ascertain community needs and interests of the area to be served and the means by which applicant proposes to meet those needs and interests.

2. Hearing conferences were held on January 12, 1971, February 20, 1973 and August 7, 1973. Hearing sessions were held on September 18–20, 1973. The record was closed on September 20, 1973.

[1] Oklahoma Broadcasting Company, 25 FCC 2d 434.

[2] Southwestern Sales Corporation, dismissed with prejudice, FCC 70M–1728, released December 18, 1970; Oklahoma Broadcasting Company, dismissed with prejudice, FCC 71M–1341, released August 18, 1971; Oklahoma Broadcasting Company for Tulsa, Oklahoma, dismissed with prejudice; and American Christian College, Inc., severed, FCC 71M–1481, KTOK Radio, Inc., dismissed with prejudice, FCC 73M–681, released June 7, 1973.

3. For the reasons set forth hereinafter, this, as an Initial Decision, SHALL GRANT the application of All American Broadcasting Corporation.

FINDINGS OF FACT

Financial issue

4. When the instant application was designated for hearing, its proposed construction and first-year operating costs totalled $50,750. All American has amended its financial proposal and now estimates its construction and first-year operating costs to be as follows (AAB Exhibits 2 and 3):

Equipment	$12,978
Transmitter building	450
Other expenses (including legal engineering, installation and miscellaneous)	2,400
First-year operating costs	43,685
Total construction and first-year operating costs	59,513

5. To meet its estimated construction and first-year operating costs, All American proposes the following plan of finance (AABC Exhibit 3):

Existing capital	$1,247
New capital	43,000
Bank loans	110,000
1st year principal and interest	22,700
Subtotal	87,300
Total	131,547

6. All American's financial statement as of August 31, 1973 lists, as its only liquid asset, cash in bank of $1,247 and no off-setting current liabilities. The item "New Capital" in All American's proposal consists of stock subscriptions totalling $43,000. Paul Williams has subscribed to 7,500 shares of common stock at $2.00 per share. Mr. Williams paid $1,000 down on March 4, 1973. Of the remaining balance, $9,000 is to be paid on demand or within 10 days of demand. The $5,000 balance is to be paid in 12 monthly installments of $416.67. Raymond and Treva Harrison have subscribed for 15,000 shares of common stock at $2.00 per share. They paid $1,000 down on March 5, 1973. Of the remaining balance, $19,000 is to be paid on demand or within 10 days of demand. The $10,000 balance is to be paid in 12 monthly installments of $833.37. The $43,000 of new capital is summarized below:

Demand note from Paul Williams	$9,000
Payments from Paul Williams over one year	5,000
Demand note from Raymond and Treva Harrison	19,000
Payments from Raymond and Treva Harrison over 1 year	10,000
Total	43,000

The question of whether the new capital of $43,000 will be available to All American turns upon the question of whether Paul Williams and Raymond and Treva Harrison possess sufficient liquid assets to meet their commitments.

7. All American also proposes two bank loans as part of its financial proposal to meet construction and first-year costs. The first loan, from First State Bank and Trust Company of Oklahoma City, is for $60,000. The loan will be at 9½% interest payable over a period of up to five years with principal repayments deferred for the first six months. During the first year, principal and interest will total $11,700. The loan contains the following condition:

> . . . that All American Broadcasting Corporation and/or its principals provide cash collateral or its equivalent to secure at least 45% of the loan, and the bank would consider real estate as collateral security for the balance of the loan subject to the usual appraisal and all other aspects of a conforming real estate loan.

Under the bank's definition of a conforming real estate loan, it will loan 70% of a reputable appraisal value on real estate. Cash or its equivalent means any security that can be liquidated into cash, such as savings accounts, negotiable bonds or stock (AABC Ex. 6L).

8. The second bank loan upon which All American relies is for the amount of $50,000 from City National Bank and Trust Company. The loan is to be at an interest rate of 2% above prime for a conforming real estate loan. The loan is contingent upon approval of the loan committee and acceptance of the following items:

1. Appraisal by a registered M.A.I.
2. Attorney's opinion with all requirements met and completed.
3. Acceptable insurance (if applicable).
4. First mortgage on secured property.
5. Payments to be amortized over a 60-month period with interest only the first six months.

Using a prime rate of 10%, the principal and interest payments on this loan during the first year would be $11,000.

9. The question as to the availability of stock subscriptions and bank loans depends upon the available assets of the stockholders.[3] Each of the stockholders has listed assets which he is willing to make available to All American to meet its commitments.

10. Of the funds which Mr. James E. Miller, President of All American, intends to make available to the corporation to meet its loan requirements, only the item of cash, $10,381 can be considered a liquid asset. This amount is offset by his current liabilities totalling $6,900, broken down as follows:

Annual payments on automobiles	$3,600
Annual payments on mortgage	2,160
Annual household expenses	1,140
Total	6,900

The liquid assets available to All American from Mr. Miller, therefore, amount to only $3,481. In addition, Mr. Miller intends to sell his business, Discount Records, if All American receives a construction permit. Although he testified that he has received an oral offer of $25,000 for the purchase of his business, no written memorandum of

[3] James E. Miller is President and owns 47% of the stock of All American Broadcasting Corporation. Jesse Robinson is Treasurer and owns 30.5% of the stock. Paul Williams is a Vice President and will own 15% of the stock. Raymond Harrison is a Vice President and his wife, Treva Harrison is Secretary. Together the Harrisons will own 15% of the stock.

the offer or other extrinsic evidence of the value of the business was offered. Mr. Miller also is willing to commit his real estate, including the equity in his home.[4] The appraised values, loans outstanding and equity in Mr. Miller's real estate are as follows:

Property	Appraised value	Loan balance	Equity
401–417 North Laird (land and 2 houses)	$8,000		$8,000
Lots 22–25 Forest Park (land)	5,500		5,500
3204 North Bryant (home)	31,500	$20,851	10,649
Total			24,149

11. Mr. Jesse Robinson, Vice-President of All American, is a clerk at Tinker Air Force Base. He is willing to loan applicant up to $10,000 if the corporation should need additional funds. Such a loan would bear interest at prime plus 2%, with payments of principal and interest to be deferred until after the first year of operation. Of the assets, upon which Mr. Robinson would rely for this loan, the only liquid assets are cash, $1,700 and cash value of life insurance, $1,000. His current liabilities, on the other hand, total $6,624. Mr. Robinson will, if necessary, retire from his present job to raise additional cash. If he retired from government service immediately, he would realize $10,060 in accrued retirement benefits and 30 days annual leave. Finally, Mr. Robinson is willing to commit the equity in his home toward raising the $10,000 to loan to All American. His home is appraised at $22,000 and his mortgage balance is $12,990. His equity is, therefore, $9,010.

12. Mr. Paul Williams, a Vice-President of All American, is a Lieutenant on the Wichita, Kansas Fire Department. He intends to rely on liquid assets of cash, $4,102 and cash value of life insurance of $7,000. His current liabilities consist of the following:

Utilities	$ 480
Revolving accounts	1,200
Annual payments on home	2,692
Total	4,372

His available liquid assets then total $6,730. In addition, Mr. Williams also intends to rely on the proceeds from the sale of property he owns on North Spruce and 29 lots in Muskogee County. Mr. Williams offered no written evidence in support of his value of $10,000 for the North Spruce property. This is the amount he paid for it six years ago. He has an $8,000 mortgage balance outstanding. Mr. Williams values the 29 lots at between $11,600–$14,500 based on an oral appraisal indicating they are worth between $400 and $500 each. No written appraisal was offered. He originally paid $300 for each lot. No mortgage is outstanding on these lots.

13. Finally, Raymond and Treva Harrison, whose primary business is Treva's Club and Raymond's Barbecue, have available the following liquid assets:

[4] Mr. Miller is willing to sell or refinance his unmortgaged real estate and to refinance his home to withdraw his equity.

Cash	$21,000
Stocks, bonds, securities:[5]	
Commerce Fund, Inc	1,295
R. J. Reynolds Co	2,600
Value Line Special Situation Fund, Inc	425
Hamilton Growth Fund, Inc	1,073
Cash value of life insurance	4,166
Total	30,759

[5] The Harrisons list other securities which do not constitute liquid assets because they are not listed on major stock exchanges.

The Harrisons' available current assets total $27,759 when offset by the following current liabilities:

Annual principal and interest on home	$1,620
Insurance	600
Other	780

14. In addition to their willingness to commit cash, securities, and cash value of life insurance, the Harrisons are also willing to commit the equity in their home, the proceeds from the sale of three acres of land and the value of their business machinery. No support for the value of business machinery was offered. The appraised value of their home, 3316 East Forest Park Drive, is $52,500. The remaining mortgage is $17,000. The three acres of land on N.E. 23rd Street is appraised at $28,500. There is no mortgage on this property.

15. All American has advanced no schedule of what funds it intends to pledge as cash collateral for the cash collateral requirement of the First State Bank and Trust Company loan, nor has it proposed a schedule of real property which will be used as collateral for the balance of the First State Bank loan or for the City National Bank and Trust Company loan.

Suburban issue

16. The survey upon which All American relies was conducted sometime in early 1973. Mr. Miller at first testified that the survey was conducted in April, May and June, 1973, but he later stated it was conducted in January, February and March, 1973. In fact, an amendment to Section IV of All American's application was filed April 13, 1973. The amendment was actually dated March 26, 1973.[6] (Official Notice request is granted). Mr. Miller testified that this survey was conducted because his attorney told him his original survey was not broad enough. He does not recall the specific areas of deficiency in All American's original survey which were noted by the Commission in its designation order, *supra*.

17. All American's demographic showing contains data from the 1970 U.S. Census and from the Oklahoma City Chamber of Commerce. Mr. Miller testified that he obtained the data in January, February or early March, 1973. This is the same time the consultations were conducted. The Oklahoma City SMSA has the following 1970 population (AABC Ex. 12):

[6] The petition for leave to amend was granted in part, by Order, FCC 73M-517, released April 30, 1973.

Oklahoma County	527,717
Canadian County	32,245
Cleveland County	81,839
Total	641,801

The population of Oklahoma City is 368,856.

18. The population by race of the Oklahoma SMSA in 1970 is:

Race	County			SMSA total	Percent of total
	Canadian	Cleveland	Oklahoma		
Total	32,245	81,839	526,805	640,889	[1] 100.00
White	30,008	79,335	461,886	571,229	89.13
Negro	999	524	52,744	54,267	8.47
Indian	1,168	1,524	10,341	13,033	2.03
Japanese	4	55	411	470	.07
Chinese		115	278	393	.06
Filipino	9	40	153	202	.03
All other	57	246	992	1,295	.20

[1] Total of components does not equal 100 percent due to rounding- off.

19. The interviews of community leaders were conducted by Mr. Miller and Mr. Robinson over a period of two to three months.[7] The following community leaders were interviewed:

Name	Address	Position held
Roosevelt Turner (black)	Oklahoma City, Okla	Director of Manpower Planning, Office of the Mayor.
William Franklin (black)	do	President B.L.A.C., Inc., Cultural Organization.
Clara Luper (black)	do	Youth Advisor, NAACP Youth Council.
Willie J. Dixon (black)	do	Project Director, Whitney M. Young Street Academy.
Johnny L. Murrell (black)	do	Assistant Manager, Allied Supermarket.
Genede Anderson	do	Manager, King's Pawn.
Sammie T. Davis (black)	do	Manager, McKey-Davis Funeral Home.
Willie Burten	do	Attorney, Legal Aid Society.
Henri E. Wilson	Spencer, Okla	Secretary, Community Action Program.
Wayne C. Chandler (black)	Oklahoma City, Okla	Personnel Manager, Community Action Program.
Gloria Tucker	do	Secretary, Urban League of Oklahoma City, Inc.
Gary Royal	do	Resource Analyst, CAMPS.
Carole Hider	Guthrie, Okla	Director, 2-3-4 Playhouse Inc., Child Development Center.
Bob Simmons	Oklahoma City, Okla	Urban League JD&E Director.
Donna J. Brooks (black)	do	Masonic representative.
Joe D. Simmons	do	Project Coordinator Urban Renewal Authority.
Capt. Cecil Dixon (black)	do	Captain, Inspection Division, Oklahoma City Fire Department.
Stewart Spraggins (black)	do	Executive Director Eastside YMCA.
Mike Hisey	Norman, Okla	Attorney, Legal Aid Society.
Leonard Benton (black)	Oklahoma City, Okla	Executive Director Urban League.
Len S. Goff, Jr. (black)	do	Administrative Assistant Oklahoma Governor's Office.
Horace Teague (black)	do	Youth Coordinator Division of Manpower Development.
Etta Cogburn (black)	do	Secretary, Urban League, B.L.A.C., Inc.
A. Visanio Johnson (black)	do	State Representative, Oklahoma House of Representatives.
Hanna D. Atkins (black)	do	State Representative, Oklahoma State Legislature.

[7] Before conducting the interviews with community leaders, Mr. Miller and Mr. Robinson prepared a list of prospective leaders to be interviewed based upon the data available and their personal knowledge.

Name	Address	Position held
Dr. William E. Sims (black)	Langston, Okla	President, Langston University.
William Y. Rose (black)	Oklahoma City, Okla	Director, Oklahoma Human Rights Commission.
Lt. Lee T. Womack, II (black)	do	Alpha Phi Alpha Fraternity Inc. USN, Minority Programs Officer, Navy Recruiting District.
Rev. Joe Edwards	do	C.C.S.R. Mission, Business Manager.
Rev. N. E. Kabelitz	do	Pastor, Redeemer Lutheran Church.
Rev. LeRoy Sewell	do	Pastor, First United Methodist Church.

20. Twenty of the thirty-one leaders consulted were black because All American intends principally to serve the Black community in Oklahoma City. Although Mr. Miller conceded that his demographic data indicates that there are several manufacturing companies in Oklahoma City, and that there are several unions, no contacts of union officials are listed in the exhibit evidence. Mr. Miller also testified that although Oklahoma City does not have much agriculture, its secondary signal of the proposed facility will carry into agricultural areas. No contacts with agricultural leaders appear in the exhibit evidence; nor were contacts made with leaders of the Indian community in Oklahoma City.[8]

21. After conducting consultations with community leaders, Mr. Miller prepared the following list of problems ascertained:

1. A definite need for better coverage of local news events, with a specific need for new analysis and commentary to interpret such news within the community.

2. Much more and better news coverage concerning the Black community with an emphasis on cultural and educational enrichment and their specific community needs. In this end, there is certainly a lack of Black News Reporters and advertising directed toward the Black Community.

3. There is a need for unity within the community in general. Specifically, there is an absence of proper communications among the races, and a specific need for cooperation among the Black Community.

4. Unemployment is a serious problem within the community with a great need for more jobs. There is a great deal of employment discrimination with a need for much better economic opportunities for the Black Community; such as Black ownership of businesses, including a need for a Black radio station and a daily newspaper published by and concerning the Black Community.

5. There is a specific need for better quality education, especially for the Black Community, with better and more parental contribution to the school system.

6. A need for better and more housing, specifically for the economically deprived and the Black Community.

7. There is a great need for political understanding and involvement among the community in general, with a specific need for Black leadership and representation within the political system.

[8] One unsuccessful attempt was made to contact a community leader who was Indian.

8. A need for better recreational facilities and social activities oriented towards the youth of the community.

9. There is a need for better security protection, specifically the police department, within the community.

10. There is a need for more and better public transportation facilities, with a specific need for chaperones on school buses which bus across town.

22. This list of problems was compiled from both the leader survey and the general public survey. The list is not comprehensive but rather constitutes what four out of five people in the survey mentioned. The problems are not listed in order of their relative importance.

23. The survey of the general public was conducted over the same period of time as the leader survey. The general public survey was conducted at shopping centers around the city, businesses (including Mr. Miller's record shop) and at universities and high schools. Approximately 200 members of the general public were contacted, but only about 100 responded to specific questions concerning community problems. Approximately 41 of 50 persons who responded to questions asked on the interview form were black. Mr. Miller acknowledged that these 50 interviews were generally representative of the entire general public survey. Many people were reluctant to answer his questions because he is black. If any hostility arose in an interview, the interview was not completed. According to Mr. Miller, this accounts, in large part, for the low number of white interviewees.

24. To meet the needs ascertained in its surveys, All American proposes the following programs:

"Job Fair"—6:30–9:30 a.m., Monday through Friday, possibly on Sunday, duration to vary from 5 minutes to 15 minutes. Problem: unemployment.

"Help"—Mr. Miller's testimony on this program is conflicting. He states that the program will be broadcast from 5:30 to 5:45 p.m. daily. He then testified that the program is 5 minutes in duration broadcast at either 25 minutes after the hour or 5 minutes before the hour, four to eight times per day. Finally, he testified that it will be broadcast between 4:00 p.m. and 7:00 p.m., Monday through Friday. All American Exhibit 16 is silent on the program time, duration and frequency of broadcast. Problem: education, housing, political understanding or any other problem that arises.

"Teen Town"—9:00 a.m. to 12:00 noon, Saturday, three hours, about 50% music and entertainment. Problem: better recreational facilities, social activities oriented toward youth.

"Campus Corner"—12:00 noon–3 p.m., Saturday, three hours. Problem: education, directed at college students.

"Around the Town"—Saturday, after 3:00 p.m., once per week. Problem: police protection, transportation and other problems. Duration of the program is to be flexible.

Conclusions

Financial issue

25. The Commission designated a financial issue against All American to determine if it had sufficient funds available to meet its proposed costs. Subsequent to designation, All American amended its

application to increase its cost estimates and to propose a new plan of finance. It now requires $59,513 to meet its construction and first-year operating costs. To meet these costs, All American proposes to have available funds totalling $131,547, as follows:

Existing capital	$1,247
New capital	43,000
Bank loans	110,000
1st year principal and interest	22,700
Total	131,547

26. Applicant has cash available in the amount of $1,247. The new capital is to be provided by stock subscriptions totalling $43,000. Paul Williams is committed to $14,000 and Raymond and Treva Harrison are committed to $29,000. Paul Williams has available only $6,730 in liquid assets. Although he intends to rely on the value of certain real estate to meet his commitment to All American, no independent evidence of the value of that property has been offered. Consequently, it is impossible to determine the current market value of that property. It must be concluded, therefore, that Mr. Williams has sufficient available assets to meet only $6,730 of his $14,000 commitment to All American.

27. To meet their stock subscription of $29,000, the Harrisons have available liquid assets of $27,759. Although there is a slight difference between the funds needed and the liquid assets available to meet their commitment, the Harrisons' equity in their home, $35,500 and the equity in three acres of land, $28,500 indicates that they will be able to ultimately meet their stock subscription commitment.

28. In view of Mr. Williams' ability to provide only $6,730 toward his commitment, All American will have available only $35,730 in new capital.

29. In addition to the new capital of $35,730 and the cash on hand of $1,247, All American will have available cash from Mr. Miller and Mr. Robinson. Mr. Miller has available liquid assets which he is willing to contribute in the amount of $3,482. Mr. Robinson testified that he is willing to loan the corporation $10,000. However, his current liabilities exceed his liquid assets by $3,924. If he retires from his job at Tinker Air Force Base he would realize $10,060 in accrued retirement benefits. However, when offset by his remaining liabilities of $3,924, his liquid assets total only $6,136. Therefore, the total amount that Mr. Robinson would be able to loan the corporation is $6,146. The total cash available to the corporation, therefore, is $46,594, computed as follows:

Harrisons' stock subscription	$29,000
Williams' stock subscription	6,730
Robinson's loan	6,136
Miller's additional commitment	3,481
Cash on hand	1,247
Total	46,594

30. All American proposes to borrow $60,000 from the First State Bank and Trust Company. After deducting the first year principal and interest payments of $11,700, the net proceeds to the applicant

amount to $48,300. To obtain this loan, it must meet two collateral security requirements. First, it must demonstrate the availability of at least $27,000 (45% of the loan) in cash collateral or its equivalent. Second, applicant must demonstrate the availability of sufficient real estate to secure the balance of the loan. All American has available cash of $46,594. Therefore, the cash collateral requirement of the loan can be met. The necessary real estate to secure the balance of the loan will be provided by the stockholders. Although only $33,000 of the loan must be secured by real estate, applicant must have real estate totalling $47,143 because the bank will loan only 70% of the appraised value.

31. Each of the stockholders proposes to make available their equity in various pieces of real estate in order to secure the balance of the First State Bank loan. Mr. Miller owns two unencumbered parcels of real estate having a total appraised value of $13,500. He also has an equity in his home of $10,649. The real estate owned by Mr. Robinson would not be available because he has limited his commitment to the offer of a $10,000 loan. Mr. Williams offered no written appraisals of the value of his real estate. Therefore, it cannot be considered in determining what real estate is available to secure the bank loan. The Harrisons own three acres of land appraised at $28,000. There are no mortgages on this land. They also have an equity in their home of $35,500.[9] The total value of real estate available to secure the $33,000 balance of the loan is $88,149 itemized as follows:

Unmortgaged Miller real estate	$13,500
Equity in Miller's home	10,649
Unmortgaged Harrison real estate	28,500
Equity in Harrisons' home	35,500
Total	88,149

This amount is in excess of the $47,143 needed. Thus, All American can meet both collateral conditions of the loan and that the loan will, in fact, be available.

32. To summarize, All American has available cash of $46,594. If $27,000 of this amount is used as security for the First State Bank loan, $19,594 will be available for construction and first-year operating costs. In addition, its net proceeds from the First State Bank loan will be $48,300. Therefore, the total funds of $67,894 will be available to meet its construction and first-year operating costs of $59,513. Although All American also proposes to rely on a $50,000 loan from City National Bank and Trust Company, applicant is financially qualified without that loan.

33. Alternatively, All American can be found to be financially qualified without reliance on either proposed bank loan. As noted earlier, All American has available cash of $46,594. In addition, Mr. Miller and Mr. and Mrs. Harrison are willing to sell their unmortgaged real estate and to commit those funds to the corporation. As concluded in paragraph 31, *supra*, Mr. Miller's unmortgaged real estate is appraised at $13,500 and the Harrisons' unmortgaged real estate is ap-

[9] It should be noted that in paragraph 27, *supra*, some reliance is placed on the Harrisons' real estate in order to conclude that they have sufficient assets to meet their stock subscription. However, in view of the total value of real estate available to All American, the amount by which the Harrisons' contribution of real estate might be diminished is insignificant.

praised at $28,500 for a total of $42,000. Therefore, between its cash of $46,594 and the proceeds from the sale of real estate totalling $42,000, All American would have $88,594 to meet its construction and first-year operating costs. Finally, Mr. Miller is willing to sell his business, Discount Records. Although the value of $25,000 has not been precisely established, it should be clear that the sale of a going record business would generate substantial additional funds.

Suburban issue

34. In designating this issue, the Commission noted that All American did not appear to have contacted a representative cross-section of its area, did not adequately provide the comments received regarding community problems obtained from such contacts, and did not adequately indicate the specific programs proposed in response to specific community problems.[10]

35. In conducting the ascertainment of community problems, Mr. Miller obtained demographic data from the 1970 U.S. Census and the Oklahoma City Chamber of Commerce. Using that information and the personal knowledge of Mr. Miller and Mr. Robinson, a list of leaders was prepared. Thirty-one leaders were interviewed, including government officials, cultural organizations, businessmen, professionals, religious leaders and leaders of Black organizations. Twenty of the 31 leaders interviewed were black because of All American's intention to serve the black community. No leaders classified as Indians were contacted, although one unsuccessful attempt was made.

36. The survey of the general public was conducted in shopping centers, business, high schools and colleges. Approximately 100 persons were contacted who specifically responded to questions concerning community problems. The majority of those consulted were black. The low proportion of white persons contacted might reflect the realities, however unfortunate, of a given community because of Mr. Miller's race. While the general public survey conducted may not demonstrate to an optimum degree a random sample expected by the *Primer*[11], All American did make a positive, thus reasonable, attempt to conduct such a survey, and under the given conditions, with an admirable degree of courage, if not daring.

37. After conducting the leader survey and the general public survey, Mr. Miller prepared a list of 10 problems. While this list does not recite all of the problems ascertained as expected by the *Primer*, it does contain those problems mentioned by most people.

38. Based upon the needs ascertained, All American proposes five programs to meet those needs:

> "Job Fair"—6:30–9:30 a.m., Monday through Friday, possibly on Sunday, duration to vary from 5 minutes to 15 minutes. Problem: unemployment.
>
> "Help"—Mr. Miller's testimony on this program is conflicting. He states that the program will be broadcast from 5:30 to 5:45 p.m. daily. He then testified that the program is 5 minutes in duration, broadcast at either 25 minutes after the hour or 5 minutes before the hour, four to eight times per day. Finally, he testified

[10] 25 FCC 2d 434, 438.
[11] *Primer on Ascertainment of Community Problems*, 27 FCC 2d 650 (1971).

that it will be broadcast between 4:00 p.m. and 7:00 p.m., Monday through Friday. All American's Exhibit 16 is silent on the program time, duration and frequency of broadcast. Problem: education, housing, political understanding or any other problem that arises.

"Teen Town"—9:00 a.m. to 12:00 noon, Saturday, three hours, about 50% music and entertainment. Problem: better recreational facilities, social activities oriented toward youth.

"Campus Corner"—12:00 noon–3:00 p.m., Saturday, three hours. Problem: education, directed at college students.

"Around the Town"—Saturday, after 3:00 p.m., once per week. Problem: police protection, transportation and other problems. Duration of the program is to be flexible.

39. Although the time and duration of the programs "Help" and "Around the Town" are not clear and about half of the program "Teen Town" will be entertainment, the programs are designed to meet ascertained needs.

40. While applicant's ascertainment effort contains some weaknesses, the cumulative effect of those deficiencies are minor and would not warrant disqualification. All American's showing substantially comports with the intent and purpose, as well as the fundamental objectives, of the *Primer*. This circumstance is persuasive that here is a serious minded contender for a license of great public trust. The record demonstrates that All American has contacted a representative crosssection of community leaders as well as members of the general public; a dialogue with community leaders has been established; thus, All American is aware of the significant community problems; and it proposes programming intended to relate and respond to ascertained community problems. *Voice of Dixie, Inc.*, 41 FCC 2d 550 (1973); see also, *Click Broadcasting Co.*, FCC 73R–352 (1973). Therefore, the *Suburban* issue is resolved favorably to All American.

Accordingly, for the aforesaid reasons and the public interest so suggesting, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by a party or the Commission reviews this Initial Decision on its own motion under Section 1.276 of the Rules, that the application of All American Broadcasting Corporation for a new FM broadcast facility in Oklahoma City, Oklahoma BE AND IS HEREBY GRANTED.

JAMES F. TIERNEY,
Administrative Law Judge,
Federal Communications Commission.

F.C.C. 74-47

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request for Issuance of Tax Certificate for Sale of Viacom International, Inc., Common Stock Pursuant to Commission Order, by DAVID D. ALLEN, HILLSDALE, N.J. JULIUS F. BRAUNER, SCARSDALE, N.Y. CLARENCE H. HOPPER, GARDEN CITY, N.Y. J. A. W. IGLEHART, LUTHERVILLE, MD. RICHARD W. JENCKS, WASHINGTON, D.C. GODDARD LIEBERSON, NEW YORK, N.Y. ROBERT A. LOVETT, LOCUST VALLEY, N.Y. JACK B. PURCELL, LOS ANGELES, CALIF. JOHN A. SCHNEIDER, GREENWICH, CONN. FRANK STANTON, NEW YORK, N.Y.	File No. CTAX-18

MEMORANDUM OPINION AND ORDER

(Adopted January 16, 1974; Released January 23, 1974)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. On September 12, 1973, the above-captioned petitioners filed a joint application (CTAX-18) for tax certificates pursuant to Section 1071 of the Internal Revenue Code [1] with respect to the sale of their stock in Viacom International, Inc.

2. Viacom International is the result of a spin-off by Columbia Broadcasting System, Inc. (CBS) of its cable television and program syndication businesses in 1970 in order to comply with newly adopted Commission rules that: (a) prohibit a cross ownership, operation, control, or interest of a national television network and cable television systems [2] and (b) prohibit certain syndication activities and

[1] Section 1071 of the 1954 Internal Revenue Code provides:

If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in policy of, or the adoption of a new policy by, the Commission with respect to the ownership or control of radio broadcast stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of Section 1033 . . . .

The term "radio broadcast stations" refers not only to AM, FM, and television broadcast stations, but also to cable television systems and television broadcast networks, both of which provide a mass communications service ancillary to broadcasting and hence are subject to Commission regulation. *J.A.W. Iglehart,* 38 FCC 2d 541, 542 (1972); *Cosmos Cablevision Corp.,* 33 FCC 2d 293, 295 (1972).

[2] Section 76.501 of the Commission's rules, states in pertinent part:

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: (1) a national television network (such as ABC, CBS, NBC) . . . .

non-network interests by television networks.[3] In June, 1971, the Commission found that the spin-off plan proposed by CBS would fully comply with the rules "only if all CBS officers and directors, Broadcast Group division presidents, and any individual stockholder with one percent or more of CBS common stock, dispose of [Viacom] stock" within two years. *Columbia Picture Industries, Inc.*, 30 FCC 2d 9, 16.

3. Petitioners were officers and/or directors of CBS at the time of the Viacom spin-off, and they filed acceptance of the Commission's Order on June 4, 1971. Attachment A shows the number of shares of Viacom stock each petitioner received in the spin-off distribution and the number of shares they have disposed of by sale on the open market.[4]

4. In *E. K. Meade, Jr.*, FCC 73-719, — FCC 2d —, we issued tax certificates to two CBS officers who had sold Viacom stock pursuant to our order in *Columbia Pictures Industries, Inc., supra.* This case is almost identical. In light of the *Meade* decision and petitioners' representations of open market sales of the Viacom stock, we find that those sales were "necessary or appropriate to effectuate a change in policy or the adoption of a new policy" by the Commission.

Accordingly, IT IS ORDERED, That the above-captioned joint application for issuance of Tax Certificates (CTAX-18) filed by David D. Allen, Julius F. Brauner, Clarence H. Hopper, J.A.W. Iglehart, Richard W. Jencks, Goddard Lieberson, Robert A. Lovett, Jack B. Purcell, John A. Schneider, and Frank Stanton, IS GRANTED, and that the tax certificates appended hereto will BE ISSUED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

ATTACHMENT A

Name, title and home address	Number of Viacom shares originally received	Shares sold—Date(s)—Open market sales—NYSE	
David D. Allen [vice president], 65 Weirimus Rd., Hillsdale, N.J. 07642	14	14	May 29, 1973
Julius F. Brauner [secretary], 30 Circle Rd., Scarsdale, N.Y. 10583	977	200	July 16, 1973
		300	July 17, 1973
		400	July 18, 1973
		77	July 19, 1973
		977	

See footnotes at end of table.

[3] Section 73.658(j)(1)(i) provides in substance that no television network shall, after June 1, 1973, engage in "syndication" within the United States (*i.e.*, sell or license television programs to United States stations for non-network exhibition) or engage in such activity in foreign countries except as to programs of which it is the sole producer. Section 73.658(j)(1)(ii) prohibits, after August 1, 1972, television networks from acquiring any financial or proprietary interest, except the right to network exhibition, in television programs produced wholly or partly by any other person. These rules were adopted in May, 1970, 23 FCC 2d 382, *reconsideration denied*, 25 FCC 2d 318 (1970). The Commission's authority to adopt the rules was upheld by the United States Court of Appeals in *Mount Mansfield Television, Inc.*, 442 F. 2d 470 (2d Cir. 1971).

[4] Messrs. Jencks and Stanton donated the balance of their Viacom stock to charity. They request tax certificates only for those shares sold by them.

Name, title and home address	Number of Viacom shares originally received	Shares sold—Date(s)—Open market sales—NYSE	
Clarence H. Hopper [vice president], 39 Hilton Ave., Garden City, N.Y. 11530	[1] 160 [2] 1,897	160 [1] 197 [2] 500 [2] 500 [2] 500 [2] 200 [2]	Apr. 12, 1972 Do. July 17, 1973 July 18, 1973 July 19, 1973 Do.
		2,057	
J. A. W. Iglehart [director], Jenifer Rd., Lutherville, Md. 21093	6,500	1,000 1,000 1,800 100 1,100 1,500	Jan. 19, 1973 Aug. 2, 1973 Aug. 6, 1973 Aug. 7, 1973 Aug. 15, 1973 Aug. 16, 1973
		6,500	
Richard W. Jencks [vice president], 4830 Rockwood Parkway NW., Washington, D.C. 20016	473	314 100	Mar. 16, 1972 May 23, 1973
		414	
Goddard Lieberson [director and senior vice president], 247 East 61st St., New York, N.Y. 10021	6,068	800 1,200 1,500 200 300 1,000 968 100	July 18, 1973 July 19, 1973 July 20, 1973 July 23, 1973 July 24, 1973 July 25, 1973 July 26, 1973 July 27, 1973
		6,068	
Robert A. Lovett [director], Locust Valley, N.Y. 11560	1,762	562 600 200 400	May 17, 1973 May 18, 1973 May 21, 1973 May 24, 1973
		1,762	
Jack B. Purcell [assistant secretary], 1300 Midvale Ave., Los Angeles, Calif. 90024	417	417	Apr. 25, 1973
John A. Schneider [director and vice president], Indian Harbor, Greenwich, Conn. 06830	2,506	2,506	July 27, 1973
Frank Stanton [director], 5 East 92d St., New York, N.Y. 10028	45,733	1,100 1,100 300 200	Aug. 21, 1973 Aug. 22, 1973 Aug. 23, 1973 Aug. 27, 1973
		2,700	

[1] Joint ownership, Clarence H. Hopper and Elizabeth A. Hopper.
[2] Clarence H. Hopper.

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

David D. Allen has reported to the Commission his sale, on May 29, 1973, of 14 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and officer, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Allen of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership, operation, control, or interest of a cable television system with a national

television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Julius F. Brauner has reported to the Commission his sale, on July 16–19, 1973, of 977 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and officer, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Brauner of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership, operation, control, or interest of a cable television system with a national television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Clarence H. Hopper has reported to the Commission his sale, on April 12, 17–19, 1973, of 2,057 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and officer, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Hopper of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership, operation, control, or interest of a cable television system with a national television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

J. A. W. Iglehart has reported to the Commission his sale on January 19, August 2, 6, 7, 15–16, 1973, of 6,500 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and director, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Iglehart of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership, operation, control, or interest of a cable television system with a national television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Richard W. Jencks has reported to the Commission his sale, on March 16, 1972, April 23, 1973, of 414 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and officer, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Jencks of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership, operation, control, or interest of a cable television system with a national television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Goddard Lieberson has reported to the Commission his sale, on July 18–20, 23–27, 1973, of 6,068 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and officer, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Lieberson of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership,

operation, control, or interest of a cable television system with a national television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Robert A. Lovett has reported to the Commission his sale, on May 17–18, 21, 24, 1973, of 1,762 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and director, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Lovett of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership, operation, control, or interest of a cable television system with a national television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Jack B. Purcell has reported to the Commission his sale, on April 25, 1973, of 417 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and officer, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Purcell of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership, operation, control, or interest of a cable television system with a national television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

John A. Schneider has reported to the Commission his sale, on July 27, 1973, of 2,506 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and officer, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Schneider of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership, operation, control, or interest of a cable television system with a national television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Frank Stanton has reported to the Commission his sale, on August 21–23, 27, 1973, of 2,700 shares of common stock of Viacom International, Inc., which shares he originally acquired when Columbia Broadcasting System, Inc., of which he is a shareholder and director, turned over its program syndication and cable television operations to Viacom International, Inc., which was specifically organized for that purpose. The sale by Mr. Stanton of the aforementioned Viacom International, Inc., shares was to effectuate compliance with Commission Order, *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rules and policies prohibiting (1) cross-ownership, operation, control, or interest of a cable television system with a national television network (Section 76.501 of the Commission's rules, adopted June 24, 1970, *Second Report and Order in Docket 18397*, 23 FCC 2d 816); and (2) prohibiting certain syndication activities and non-network interests by television networks (Section 73.658(j)(1) of the rules, adopted May 4, 1970, *Report and Order in Docket 12782*, 23 FCC 2d 382).

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this day of January, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 74–79

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matters of BELL SYSTEM TARIFF OFFERINGS OF LOCAL DISTRIBUTION FACILITIES FOR USE BY OTHER COMMON CARRIERS and LETTER OF CHIEF, COMMON CARRIER BUREAU, DATED, OCTOBER 19, 1973, TO LAURENCE E. HARRIS, VICE PRESIDENT, MCI TELECOMMUNICATIONS CORP.	Docket No. 19896

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1974; Released January 25, 1974)

BY THE COMMISSION:

1. In a Memorandum Opinion and Order to Show Cause, FCC 73–1299, released December 13, 1973, in paragraph 18, we directed the Bell System companies to show cause why they should not be ordered to cease and desist from:

(a) altering, in any way, the provisions of exchange of facilities contracts with Western Union, except in strict accordance with the terms of such contracts;

(b) engaging in any conduct which results in a denial of, or unreasonable delay in establishing, physical connections with MCI for its authorized or pending interstate services;

(c) implementing any policy or practice which forecloses the establishment of through routes, and charges, facilities and regulations applicable thereto, in connection with MCI's authorized or pending interstate services;

(d) filing with state commissions tariff schedules of charges and regulations for services and facilities used for communications originating in one state and terminating in another state; and

(e) implementing any policy or practice which results in denying MCI interconnection privileges similar to those presently provided to AT&T's Long Lines Department in connection with its authorized or pending interstate service.

AT&T was also ordered to show cause: (a) why filing Bell tariffs for domestic satellite interconnection facilities with state commissions, rather than exclusively with this Commission, should not be considered as non-compliance with a condition in its domestic satellite authorizations that such filings be made pursuant to Section 203 of the Act and Part 61 of our Rules; and, (b) if such filings with the states are found not to be in compliance with the foregoing condition, why

AT&T's domestic satellite authorizations should not be revoked or modified.

2. Now before us for consideration are the following pleadings: a petition to modify issues filed January 10, 1974, by ITT World Communications, Inc. (ITT); a petition to clarify issues, filed January 4, 1974, by RCA Global Communications, Inc. (RCA); a motion to change issues, filed January 17, 1974, by Western Union International, Inc. (WUI);[1] a letter from WUI, dated January 3, 1974, requesting that we require the Bell System companies to defer implementation of certain tariffs pending the conclusion of this proceeding, and a request by ITT filed January 18, 1974, for the grant of an extension of time in which to file briefs. Responsive pleadings were filed January 11 and 17, 1974, by the Chief, Common Carrier Bureau, on January 17, 1974, by MCI Telecommunications Corporation and MCI-New York West, Inc. (MCI) and on January 22, 1974, by the Bell System companies.

3. In its petition RCA requests that we modify clauses (b), (c), (d) and (e) of paragraph 18 so that they will encompass Bell's conduct with carriers other than MCI and communications which would terminate in a foreign country. WUI and ITT also would have us modify paragraph 18(d) to include communications between domestic and foreign points. In addition WUI and ITT request that we modify paragraph 18(a) to include contracts for services which the Bell System may have with other common carriers. ITT also requests that Bell be ordered to provide facilities to all carriers on the same terms and conditions, and WUI requests an additional clause ordering Bell to cease and desist from the implementation of any policy or practice which would impair service to international carriers in violation of Section 214 of the Act and Part 63 of the Rules.

4. In permitting the intervention and participation of carriers other than MCI and the Western Union Telegraph Company (Western Union Telegraph), we recognized their interest in the matters raised by the Memorandum Opinion and Order to Show Cause. The policy considerations raised by enlarging the issues to encompass the intervening carriers do not appear to be significantly different from those raised by MCI. Moreover, with respect to clause (d), our concern is to prevent an unlawful derogation of our regulatory authority over interstate communications through the filing of certain tariffs with state commissions. Thus we will broaden the scope of our order to include other interested carriers and international communications either originating or terminating in the United States.

5. ITT and WUI both argue that they have been provided with services pursuant to contracts with the Pacific Telephone and Telegraph Company (PT&T), a Bell System affiliate and respondent in this proceeding. They assert that PT&T is seeking to abrogate these contracts through the filing of FCC Tariff No. 122, and they request that clause (a) of paragraph 18 be modified to include their contracts with the Bell System companies. The requested relief will be denied. It is not clear from the allegations in the pleadings before us that the factual, legal and policy matters with respect to the ITT and WUI situation are sufficiently similar to those under consideration here to

[1] WUI's petition, which was untimely, was accompanied by a motion for waiver requesting that we accept its late petition.

warrant their inclusion; [2] and we deem it inadvisable to broaden the questions to be explored in this already complex proceeding. On the contrary, we conclude that it would be more appropriate to consider the matters raised by ITT and WUI in a proceeding involving their own contractual arrangements with PT&T and the tariff filings which they assert affect or threaten the continuation of such arrangements.

6. ITT also requests that we order Bell to cease and desist from discriminating among carriers. Specifically, it alleges that preferential rates are being accorded Western Union Telegraph under the exchange contracts which are continued by our Memorandum Opinion and Order to Show Cause. What is in issue here, however, is the legal question of whether Western Union Telegraph's contracts can be superseded by tariff filings, and the factual question of whether or not the Bell System has engaged in discriminatory conduct in its contracts with other carriers is beyond the scope of this proceeding. This request must therefore also be denied.

7. WUI also requests that we order the Bell System companies to show cause why they should not cease and desist from implementing any policy or practice which would impair services to international record carriers in violation of the Act and Rules. WUI alleges that certain tariffs filed with state regulatory commissions will result in a derogation of services. To the extent that the inquiry requested is encompassed in clause (d) of paragraph 18, it will of course be considered. However, we have no sufficient basis for the broad sweeping order requested by WUI.

8. WUI also filed a letter in this docket requesting us to exercise peremptory jurisdiction and order the Bell System companies to continue to provide existing services and to defer the effective dates of certain unspecified FCC tariffs for service to international record carriers. WUI's letter is not in a form authorized by our Rules, it contains no affidavit of service, and it has not shown that contracts similar to that between Western Union Telegraph and Bell are involved, or the nature of its arrangements with Bell. WUI's letter is improper, and it will be dismissed.

9. We also have under consideration a request from ITT for an extension of time within which to file briefs.[3] ITT cites our failure to act earlier on its petition to modify issues [4] and on its petition for leave to intervene.[5] Our Memorandum Opinion and Order to Show Cause was released on December 13, 1973. It placed all interested parties on notice that they were to advise the Commission by December 27, 1973, of their intention to appear and to file briefs by January 21, 1974. Since ITT was dilatory in that it did not petition for leave to intervene until January 7, 1974, or file its petition to modify

[2] Western Union Telegraph's contracts provide for exchange of services. In contrast both ITT and WUI's contracts are only for the provision of services by Bell. WUI argues that, in effect, Western Union Telegraph no longer furnishes Bell with services under the exchange of services contracts.

[3] On January 22, 1974, counsel for ITT advised by wire that the Bell System companies had no objection to a grant of the requested extension.

[4] Briefs were due on January 21, 1974. Since ITT did not file its petition to modify until January 10, 1974, replies were not due until January 24, 1974. This untimely filing delayed the disposition of ITT's petition.

[5] The petition for leave to intervene was granted by our Order, FCC 74–44, adopted January 16, 1974, released January 22, 1974. A public notice advising the parties of the action taken released on January 16, 1974.

issues until January 10, 1974, we find no merit to its request for an extension of time.[6] We are of course cognizant that the modifications of our Memorandum Opinion and Order to Show Cause as granted herein raise additional issues, and we shall authorize the filing of additional pleadings to enable the parties to comment on such new matters.

11. Accordingly, IT IS ORDERED, That paragraphs 18 (b), (c), (d) and (e) of our Memorandum Opinion and Order to Show Cause, FCC 73–1299, released December 13, 1973, ARE MODIFIED to read:

> (b) engaging in any conduct which results in a denial of, or unreasonable delay in establishing, physical connections with MCI and the other carrier parties for their authorized or pending interstate services;
>
> (c) implementing any policy or practice which forecloses the establishment of through routes, and charges, facilities and regulations applicable thereto, in connection with MCI's and the other carrier parties' authorized or pending interstate services;
>
> (d) filing with state commissions tariff schedules of charges and regulations for services and facilities used for communications originating in one state and terminating in another state, or communications between a state and a point outside the United States; and
>
> (e) implementing any policy or practice which results in denying MCI or any other carrier party interconnection privileges similar to those presently provided to AT&T's Long Lines Department in connection with their authorized or pending interstate services.

12. IT IS FURTHER ORDERED, That the parties ARE AUTHORIZED to comment on new issues raised by the foregoing modifications in their reply comments on or before February 4, 1974, and may file further reply comments related to other parties' comments on such matters no later than February 11, 1974.

13. IT IS FURTHER ORDERED, That the petition to clarify issues filed January 4, 1974, by RCA Global Communications, Inc. IS GRANTED;

14. IT IS FURTHER ORDERED, That a petition for waiver of the rules, filed January 17, 1974, by Western Union International, Inc., IS GRANTED;

15. IT IS FURTHER ORDERED, that the petitions to modify issues, filed January 10, 1974, by ITT World Communications, Inc. and to change issues, filed January 17, 1974, by Western Union International, Inc., ARE GRANTED to the extent indicated herein and in all other respects ARE DENIED.

16. IT IS FURTHER ORDERED, that the letter filed January 3, 1973, by Western Union International, Inc., IS DISMISSED.

17. IT IS FURTHER ORDERED, that the request for an extension of time in which to file briefs filed January 18, 1974, by ITT World Communications, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[6] It should be noted that none of the other intervenors or parties has requested an extension of time to file briefs.

F.C.C. 73-1341

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
BRIDGEPORT COMMUNITY ANTENNAE TELEVISION CO., BRIDGEPORT, CONN., STRATFORD, CONN.	CAC-1664 (CT055) CAC-1665 (CT056)
VALLEY CABLE VISION, INC., SHELTON, CONN.	CAC-1853 (CT060)
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released January 8, 1974)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND HOOKS CONCURRING IN THE RESULT; COMMISSIONER REID CONCURRING IN THE GRANT OF THE APPLICATIONS FOR CERTIFICATES BUT DISSENTING WITH RESPECT TO THE CARRIAGE OF STATION WNYC-TV

1. Bridgeport Community Antennae Television Company has filed applications for certificates of compliance to begin cable television service at Bridgeport and Stratford, Connecticut, and Valley Cable Vision, Inc., has filed an application to begin cable service at Shelton, Connecticut. These systems are located within the Hartford-New Haven-New Britain-Waterbury television market (#19). The systems propose to offer subscribers the following television broadcast signals:[1]

WHNB-TV (NBC, Channel 30) New Britain, Connecticut.
WTIC-TV (CBS, Channel 3) Hartford, Connecticut.
WHCT-TV (Ind., Channel 18) Hartford, Connecticut.
WEDH (Educ., Channel 24) Hartford, Connecticut.
WTNH-TV (ABC, Channel 8) New Haven, Connecticut.
WATR-TV (NBC, Channel 20) Waterbury, Connecticut.
WEDW (Educ., Channel 49) Bridgeport, Connecticut.
WCBS-TV (CBS, Channel 2) New York, New York
WNBC-TV (NBC, Channel 4) New York, New York.
WABC-TV (ABC, Channel 7) New York, New York.
WNEW-TV (Ind., Channel 5) New York, New York.
WOR-TV (Ind., Channel 9) New York, New York.
WPIX (Ind., Channel 11) New York, New York.
WNYC-TV (Noncommercial, Channel 31) New York, New York.
WNET (Educ., Channel 13) Newark, New Jersey.
WXTV (Spanish language, Channel 41) Paterson, New Jersey.
WNJU-TV (Spanish language, Channel 47) Linden, New Jersey.

[1] Each of Bridgeport Community Antennae Television Company's proposed systems will have a 60 channel capacity. The Valley Cable Vision system will have a 46 channel capacity. Each system will provide all required access cablecasting services.

In addition, Bridgeport Community Antennae Television Company proposes to carry the following signals:

WKBG–TV (Ind., Channel 56) Cambridge, Massachusetts.
WSBK–TV (Ind., Channel 38) Boston, Massachusetts.
WLIW (Educ., Channel 21) Garden City, New York.
WSNL–TV (CP, Channel 67) Patchogue, New York.

Carriage of all of the above signals is consistent with Section 76.61 of the Commission's Rules.[2] Objections to these applications have been filed by Broadcast Plaza, Inc., licensee of Station WTIC–TV, Connecticut Television, Inc., licensee of Station WHNB–TV, and Connecticut Educational Television Corporation, licensee of Stations WEDH and WEDW. The cable systems have replied.

2. In their oppositions, both Broadcast Plaza and Connecticut Television argue that Bridgeport's and Valley Cable's franchises fail to comply with Section 76.31 of the Commission's Rules. In *Valley Cable Vision, Inc.*, 38 FCC 2d 959, *recon. denied*, 40 FCC 2d 191 (1973), the Commission held that franchises granted by the State of Connecticut are in fact in substantial compliance with our franchise standards. Although the subject cable television systems were not party to that decision, the franchises are identical to, and were issued at the same time as, the franchises considered in *Valley Cable Vision, Inc., supra.* Therefore, the objections of Broadcast Plaza and Connecticut Television will be denied.

3. Connecticut Educational Television Corporation (CETC) objects to the carriage of Station WNET on all the subject cable systems and to the carriage of WLIW on Bridgeport Community Antennae's systems. In support CETC states that it was created by the State of Connecticut to serve in a state-wide capacity. This is accomplished through in-school programming geared to the needs of Connecticut school systems, through programming offered by the PBS and EEN networks, and through local programming of its own. CETC is concerned that the carriage of WNET and WLIW will have an adverse impact on the "continuing need to obtain operating and capital fund contributions from individuals and school systems which comprise a significant portion of CETC's operating budget." If potential contributions to CETC are diverted to WNET and WLIW or if potential audience is lost to them, CETC believes that it will suffer a corresponding loss of funds and impairment of its state-wide service.

4. WNET provides Grade B service to all of the communities involved. Thus, it is deemed a "local" signal and is required to be carried pursuant to Section 76.61(a)(2) of the Rules. (WNET has requested carriage on all of the subject cable systems and has filed comments in opposition to CETC's objection.) Likewise, WLIW provides Grade B service to Bridgeport but is distant to Stratford. In *Information Transfer, Inc.*, 38 FCC 2d 335, 337 (1972) we reaffirmed our belief that the public interest is served by the widest possible dissemination of educational and public television programming. Although recognizing that the advantages of this approach must be weighed against the disadvantages of an unwarranted profusion of both local and

[2] Carriage of Station WNYC–TV will be authorized in accordance with our opinion in *Valley Cable Vision, Inc.*, FCC 73–1246, —— FCC 2d —— (1973).

distant educational signals, we denied an objection to the carriage of an educational station providing Grade B service over the cable community, stating:

> First, there is a presumption at work that "[i]t would be a disservice to the public to deprive them of educational television service from local stations, . . ." It is thus not very meaningful to state, as a general proposition, that the provision of the signal of another local educational station . . . will inevitably erode the public support a station now enjoys, particularly in its core city and environs. Second, our program exclusivity rules will protect much of the programming of a higher priority educational station from the profusion of duplicating educational signals.

It matters not that, as in this instance, the disputed signal is from an out-of-state station, for it is nonetheless local by operation of the Rules. We are not persuaded by CETC's arguments that a departure from the clear provisions of Section 76.61(a)(2) of the rules is appropriate.

5. As noted above, the signal of WLIW is distant to Stratford. In *Norristown Distribution Systems, Inc.*, 38 FCC 2d 350 (1972) after objection from a local educational station, we denied a cable system permission to carry a distant educational station. However, we emphasized that an objection by a local educational station does not require automatic denial of distant educational signal carriage, but rather that any objection must be supported by "probative evidence." CETC's objection is conclusory in nature and contains no evidence that the carriage of WLIW will erode existing viewer support. Again, the program exclusivity rules will protect much of the programming offered by WEDW and WEDH. We do not find any public interest that would be served by denying cable subscribers the very type of programming that the cable rules were designed to encourage. We will, therefore, deny CETC's objections.

6. As stated in footnote 1, *supra*, Bridgeport's proposed systems will have a 60 channel capacity. To do this, the systems propose to install a dual cable plant having an A and a B cable. The A cable will be used for downstream communications and will be able to carry the equivalent of 30 video channels, including the 21 proposed broadcast signals, to all subscribers. The B cable will be used for specialized services including return video, audio and digital communications, meter reading, and alarm and detection services, as well as point to point two-way and interactive services. Although the equal bandwidth requirement of Section 76.251(a)(2) of the Rules technically is satisfied by use of the B cable (it is capable of providing channels suitable for transmission of Class II or Class III signals) we are concerned that the B cable will not be installed unless the subscriber wishes to utilize one of the "specialized" services, presumably for an additional fee. Nevertheless, the A cable will be capable of providing at least the minimum number of access channels required by the Rules. Bridgeport, of course, may have to expand its access channel capacity in accordance with Section 76.251(a)(8) of the Rules, and should the operation of that rule require capacity in excess of that available on cable A, the B cable is available. We therefore will grant the subject applications, but Bridgeport should be on notice that if the demand

for access services and the operation of Section 76.251(a)(8) of the Rules necessitates the use of the B cable for these required services, the B cable must be installed in the homes of all subscribers at no additional charge.

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the objections to the captioned applications filed February 5, 1973 and March 9, 1973 by Broadcast Plaza, Inc., ARE DENIED.

IT IS FURTHER ORDERED, That the "Objections of Connecticut Television, Inc." to the captioned applications filed February 5, 1973 and March 8, 1973 ARE DENIED.

IT IS FURTHER ORDERED, That the "Objection[s] to Applications for Certificate of Compliance" directed against the captioned applications filed February 20, 1973 and March 9, 1973, by Connecticut Educational Television Corporation, ARE DENIED.

IT IS FURTHER ORDERED, That the applications for certificates of compliance (CAC–1664, 1665) filed by Bridgeport Community Antennae Television Company ARE GRANTED, and appropriate certificates of compliance will be issued.

IT IS FURTHER ORDERED, That the application for certificate of compliance (CAC–1853) filed by Valley Cable Vision, Inc., IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1310

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CAVALLARO BROADCASTING CORP., SAN JUAN, PUERTO RICO Requests: 1030 kHz, 10 kW, DA-1, U	Docket No. 19897 File No. BP-19073
BORICUA BROADCASTING CORPORATION, SAN JUAN, PUERTO RICO Requests: 1030 kHz, 10 kW, DA-1, U	Docket No. 19898 File No. BP-19201
SUMMIT BROADCASTING OF PUERTO RICO, INC., SAN JUAN, PUERTO RICO Requests: 1030 kHz, 10 kW, DA-1, U	Docket No. 19899 File No. BP-19202
JOSE A. FIGUEROA AND ANTONIO L. OCHOA d/b AS FIGUEROA AND ASSOCIATES, RIO GRANDE, PUERTO RICO Requests: 1030 kHz, 1 kW, DA-1, U	Docket No. 19900 File No. BP-19203
VIEQUES RADIO CORP., ISABEL SEGUNDA, VIEQUES, PUERTO RICO Requests: 1030 kHz, 250 W, 1 kW-LS, U For Construction Permits	Docket No. 19901 File No. BP-19204

MEMORANDUM OPINION AND ORDER

(Adopted December 12, 1973; Released December 27, 1973

BY THE COMMISSION:

1. The Commission has for consideration the above-captioned and described applications which are mutually exclusive, and therefore must be designated for hearing.

2. At the outset, the Commission recognizes the necessity of providing for some workable procedure to provide a basis for the estimates of the areas and populations to be served by the proposed stations at night. The nighttime service areas of the proposed stations will be determined, in whole or in part, by the nighttime limitations from a station in Cuba, CMJR, Camaguey (1030 kHz, 5 kW, DA, U). These limitations are not precisely determinable because the Cuban station has not notified a directional antenna pattern. However, assuming the maximum realistic radiation from CMJR, each of the proposals may nonetheless be expected to provide satisfactory service to their respective communities in accordance with our rules. It is necessary, therefore, that the parties to this proceeding enter into a stipulation governing the assumptions to be utilized in determining the nighttime limitations imposed by CMJR. The Administrative Law Judge designated to preside at the hearing will, in the Judge's discretion, make appropriate rulings on the necessary procedures for

reaching such a stipulation and will, of course, approve whatever reasonable stipulation the parties may agree upon.

3. The three applicants for a San Juan station, Cavallaro Broadcasting Corporation (Cavallaro), Boricua Broadcasting Corporation (Boricua), and Summit Broadcasting of Puerto Rico, Inc. (Summit), propose antenna sites which are located in rugged terrain. Site photographs submitted by these applicants indicate that substantial terrain irregularities exist in the immediate vicinity of these three proposed sites. Thus, there is a substantial question of whether the terrain irregularities would preclude satisfactory adjustment and maintenance of the proposed arrays. The three proposed sites are located within six miles of each other, and thus, similar problems in adjusting and maintaining the arrays, making adequate proofs of performance, etc., would be experienced.

4. In earlier proceedings on the Cavallaro proposal, the predecessor to the Cavallaro Broadcasting Corporation, Augustine L. Cavallaro, Jr., placed in the hearing record certain proposals for site preparation and technical data concerning the adjustment and maintenance of the array. *Augustine L. Cavallaro, Jr.*, 15 FCC 2d 870. On the basis of those representations, it would appear that the array, constructed and operated in accordance with those proposals, and subject to appropriate conditions, would prove satisfactory. However, in the case of the Boricua and Summit, no such representations have been made. Accordingly, an issue concerning the suitability of the sites proposed by Boricua and Summit must be specified.

5. In the Cavallaro application it is proposed to top-load the antenna towers to achieve the necessary electrical characteristics. Therefore, in the event of a grant of the Cavallaro application, the construction permit will be conditioned to require the permittee to submit current distribution measurements.

6. Because of the site locations of the Cavallaro, Boricua, and Summit application, any permit issued to any one of those applicants must include certain conditions in addition to those standard conditions included in standard broadcast construction permits. Because of other transmitting facilities in the vicinity of the Cavallaro and the Summit sites, any grant to either of those applicants will be subject to the condition that steps be taken to prevent adverse effects due to reradiation and cross modulation. The sites proposed by Cavallaro, Boricua, and Summit are within a relatively short distance from a monitoring station on U.S. Government property at Sabano Seca, Puerto Rico. Therefore, the Commission will prescribe a maximum field strength at any location on the Government property, and any of the three applicants, if it should prevail in the hearing, must assume the responsibility of eliminating any interference to any of the operations at the Government facility.

7. Cavallaro Broadcasting Corporation will require approximately $501,382 to construct the proposed station and operate for a period of one year. This estimate includes the following: down payment on equipment costing $142,000, $28,400; twelve months' payments on equipment balance, $28,400; twelve months' interest on equipment balance at 7 percent, $8,716; interest on $500,000 loan (if available) at current interest rate of 12 percent, $60,000; land preparation per appli-

cant per applicant's Appendix A, Exhibit III, $50,000; building per applicant's Appendix A, Exhibit III, $25,000; miscellaneous and other items per applicant's Appendix A, Exhibit III, $116,786; and working capital per applicant's Appendix B, Exhibit III, $184,080.

8. The Cavallaro Broadcasting Corporation indicates the intention of relying on existing capital and a bank loan. The corporate balance sheet dated November 20, 1973, indicates cash and/or liquid assets in excess of current liabilities of $4,860. The bank loan on which the Cavallaro Broadcasting Corporation relies is a loan from The Bank of Nova Scotia of a half million dollars. The applicant states that this bank commitment is unconditional except that the bank will require the personal guarantees of the applicant's two principals. Those principals have indicated their willingness to guarantee the loan. The applicant's assertion that the loan is unconditional except for the personal guarantees of its principals is not correct. The loan is subject to the further condition that the corporation shall provide proof satisfactory to the bank's counsel that the corporation is the holder of a final and incontestable construction permit from the Federal Communications Commission to erect a fulltime standard broadcast station on 1030 kHz in San Juan. The Commission is unable to determine if the foreign bank is authorized to lend such amounts of money in U.S. currency and therefore cannot accept such loan as available without clarifications.

9. One further matter appears to require some clarification. On an earlier balance sheet of the Cavallaro Broadcasting Corporation, dated September 1, 1973, a footnote stated that "any liabilities are for profession services which are being paid directly by the stockholders." The amount of such direct payments and what effect those payments by the stockholder of liabilities—presumably liabilities of the corporation—has on the financial position of the corporation or any claims against the corporation by the stockholders who pay such liabilities are not indicated. The applicant has represented that "any further infusion of monies from its stockholders" is not necessary in the light of the corporation's bank credit. It appears to be a reasonable inference, in view of the apparent practice of the stockholders to meet corporate obligations by direct payment, and particularly in view of the fact that the bank credit, if available, will not become available in any event until the corporation becomes the holder of a construction permit, that "infusion of monies from its stockholders" has occurred in the past and may continue in the future. If that be the case, the applicant has failed to indicate the amount of such payments, past and future, and has failed to establish the ability of the stockholders to meet future direct payments. The Commission will specify a general financial issue to permit the Cavallaro Broadcasting Corporation to clarify its financial proposal.

10. On the basis of Boricua's estimates, $434,000 will be required to meet construction costs and initial operating expenses. Included in that total are: down payment on equipment, $38,125; first-year payments on equipment with interest, $43,375; land, $84,000; building, $6,000; miscellaneous, $112,500; and working capital (first year), $150,000. Boricua plans to meet its costs with cash on hand or in banks in the amount of $21,201; stock subscriptions receivable, $215,000; and

loans from stock subscribers, $266,000. Assuming that funds are available as represented, it would appear that Boricua is financially qualified. However, the balance sheets of a majority of the subscribers do not reflect sufficient cash or liquid assets in excess of current liabilities to meet their commitments. Therefore, an issue to permit the adduction of evidence of the availability of additional funds will be specified.

11. Summit's estimates indicate that a total of $217,100 will be required to meet construction costs and initial operating expenses. The itemization of these costs are as follows: down payment on equipment, $20,000; first-year payment on equipment with interest, $21,600; land, $3,000; building, $23,000; miscellaneous, $25,500; working capital for the first year, $124,000. Summit claims the availability of $7,000 cash on hand and in banks, a $200,000 bank loan, and $100,000 payable under stock subscription agreements. Summit cannot be given credit for the prospective proceeds from the bank loan, first, because the loan has been "approved in principle" subject to the condition that the interest rate is to be determined. Thus, the precise obligation to the bank cannot be ascertained. Second, the bank will require the guarantees of the corporation's stockholder, Juan Rodriguez de Jesus, and George A. Mayoral, but there is apparently no indication that the guarantors are willing to guarantee the loan. Moreover, Mr. Mayoral has subscribed to 49,000 shares of stock, but his personal balance sheet does not indicate that he has sufficient assets to meet his commitment for additional shares of stock. Accordingly, the Commission will specify appropriate issues to determine whether Summit is financially qualified.

12. The cash requirements of Vieques would appear to be $136,291, consisting of the following: down payment on equipment, $10,000; first-year payment on equipment with interest, $16,140; miscellaneous, $35,451; first-year working capital, $74,700. Although Vieques claims to have slightly in excess of $9,900 on hand and in banks, additional funds must be obtained from the proceeds of a bank loan and from subscribers to capital stock. Several aspects of the bank loan, the amount available from subscription agreements and the conditions attached to those agreements require clarification.

13. According to the latest commitment from a banking institution, the bank will favorably consider granting a line of credit in the amount of $75,000. For this line of credit extended to Vieques, the bank will require four named co-signers. The rate of interest will be eight percent per annum, and "Repayment will be required on the basis of partial payments to be agreed on and requiring an annual clean-up of the line." The difficulty with the bank's commitment, apart from the fact that it is doubtful whether a banking institution can be bound to extend credit at eight percent per annum at this time, is that the terms are so imprecise that the applicant's specific obligation to the bank cannot be determined.

14. With regard to the stock subscription agreements, four such agreements were submitted with the application as originally filed. Under these agreements, each subscriber was to make a capital contribution of $15,000, for a total of $60,000. With a subsequent amendment, two of the original subscribers increased their commitments to $40,000 and $25,000, respectively. A fifth subscriber, apparently not previously obligated to acquire a substantial interest in the corporation—although

his name appeared on a list with the original application entitled "stockholders"—undertook to purchase 30,000 shares of stock for $30,000. The fifth subscriber, is Mr. Israel Delgado Ramos. Two of the original subscribers, Rafael S. Carrillo and Antonio R. Barcelo, Hijo [1] did not file subscription agreements with the subsequent amendment. Exhibit No. III–E to the amendment refers to the new subscription agreements and states that $95,000 will be paid for the 95,000 shares covered by the new agreements. No reference is made in the amendment to the agreements signed earlier by Messrs. Carrillo and Barcelo. This raises a question of whether Carrillo and Barcelo are still bound under their agreements.

15. It appears that Carrillo and Barcelo remain under some obligation to the corporation because of the following observations. In the bank letter requiring four named cosigners, the names Antonio R. Barcelo Moreno and Rafael S. Carrasquillo appear. In Exhibit III–E to the amendment the names also appear as Antonio R. Barcelo Moreno and Rafael S. Carrasquillo. In a letter of former counsel accompanying the amendment, the names appear as Antonio R. Barcelo, Hijo, and Rafael S. Carrasquillo. However, in a letter indicating the willingness of the four guarantors to become co-signers, Mr. Barcelo apparently signed his name, "A. Barcelo, Hijo." In the same letter, the typed name Carrasquillo appears, but has been altered to eliminate the letters "asquillo" from the middle of the name, and the signature above the altered typewritten name is "Rafael S. Carrillo". At various other places in the application, the names appear as Antonio R. Barcelo, Jr., and Rafael Carrillo. Subject to later clarification, the Commission is assuming that, whenever the name Barcelo appears in any context in the application, the same individual is intended. The Commission also assumes, subject to clarification, that the names Carrillo and Carrasquillo refer to the same individual. Incidentally, at no place in the application, except on stock subscription agreements, is there any indication that either Mr. Carrillo or the new stock subscriber, Israel Delgado Ramos, will become principal stockholders of the corporation.

16. Finally, the Commission takes note of the unusual terms stated in the stock subscription agreements. Each individual agreement provides that one percent of the amount subscribed is payable upon the signing of the agreement. Another ten percent is payable on the day that a license to operate the station is issued to the applicant. The balance of the amount subscribed is due in such installments and at such times as the board of directors may, by resolutions and written notice, require. Elsewhere in the application is a statement which may be attributed to one of the stockholder subscribers, Ramon E. Dapena, since the amendment in which the statement was contained was filed under his signature, it is stated that the $95,000 reflected in the three agreements filed with the amendment is payable at any time before, during, or after construction of the station, as the board of directors may require. But there is no indication that the other stock subscribers have any other understanding than that the major portion of the amounts due under the agreements will not be payable until some time

[1] The word, "Hijo" (approximate pronunciation, EE-hoh), following the name of a person is the Spanish equivalent of the English word, Junior.

after the licensing of the station. At least, such would be a reasonable inference upon reading the agreements. Thus, there is no definite assurance that the corporation will have the funds to meet the substantial costs of a hearing and, if successful, the costs of the construction of the station prior to the issuance of a license.

17. In view of the foregoing discussion, it appears that clarifying amendments are in order. Upon consideration of all the matters that require clarification, the Commission is unable to find that the Vieques Radio Corporation is financially qualified. Therefore, a general financial issue must be specified.

18. Summit, in responding to the requirements of the statement of program service (section IV–A, FCC Form 301), provided a statement in general terms of the composition of San Juan with some discussion of the ethnic breakdown of the city of San Juan. There is little evidence of the applicant's awareness of the composition of the city with reference to economic, governmental and other activities, and the applicant has not demonstrated that interviews with some twenty-four community leaders are sufficient upon which to base a meaningful response to community problems. Moreover, the description of consultations with members of the general public is not sufficient to demonstrate that a random sampling of members of the general public has been taken. *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 36 FR 4092, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Therefore, an issue will be specified to permit Summit to demonstrate whether or not it has complied with the requirements of the Primer.

19. George A. Mayoral, one of the principals of Summit Broadcasting of Puerto Rico, Inc., is the principal stockholder (84.5 percent) of the Summit Broadcasting Company, Inc., permittee of station WJMR–TV, New Orleans, Louisiana. Although Mr. Mayoral is an officer, director, and stockholder of both Summit Broadcasting of Puerto Rico, Inc., and the Summit Broadcasting Company, Inc. (WMJR–TV), the two corporations are separate entities. On November 2, 1972, an application was tendered on FCC Form 316 requesting Commission consent to the acquisition of negative control (50 percent) of the licensee of station WBOX, Bogalusa, Louisiana, by the Summit Broadcasting Company, Inc. That application was returned because the nature of the transfer required that the application be filed on FCC Form 315 (Transfer of Control). The application was not refiled, but, instead, Summit Broadcasting Company, Inc., acquired a 49-percent interest in WBOX, and this acquisition was reported by WBOX. On June 1 of this year, WBOX filed an application (BAL–7910) in which it is proposed that all of the present stockholders, including Summit Broadcasting Company, Inc., will reliquish their interests in WBOX. On July 30 of this year, an application (BAL–7956) was filed in which it is proposed that Mr. Mayoral will acquire a majority interest (73 percent) in standard broadcast station WSDL, Slidell, Louisiana. Notwithstanding the acquisition of the Summit Broadcasting Company's interest in WBOX and the filing of the assignment applications for WBOX and WSDL, the application of Summit Broadcasting of Puerto Rico, Inc., has not yet been amended

104–023—74——3

to reflect these matters. In the application of Summit Broadcasting of Puerto Rico, Inc., as originally filed, the applicant reported the interest (50 percent) of Summit Broadcasting Company, Inc., in stations KBRZ(AM), Freeport, Texas, and KLJT(FM), Lake Jackson, Texas. On September 5, 1973, applications were filed requesting Commission consent to the assignment of the licenses of KBRZ (file No. BAL–7978) and KLJT (file No. BALH–1892) to Coastal Broadcasting, Inc. However, the application of Summit Broadcasting of Puerto Rico, Inc., has not been amended to reflect the pendency of the KBRZ and KLJT applications. Accordingly, Summit Broadcasting of Puerto Rico, Inc., has not complied with section 1.65 [2] of the Commission's rules, and the applicant's failure to comply with that section must be placed in issue.

20. Three of the applicants in this proceeding specify the city of San Juan as the station location; the fourth applicant specifies Rio Grande, which is situated some ten to twelve miles east of San Juan; and the fifth applicant specifies the community of Isabel Segunda, approximately forty miles east-southeast of San Juan on the Island of Vieques. It is apparent, therefore, that one of the determinations required in this proceeding is the question of fair, efficient and equitable distribution of radio service as contemplated by section 307(b) of the Communications Act of 1934, as amended. Accordingly, an appropriate issue is being specified. The applicants are being required in accordance with the consistent practice in a case of this nature to adduce evidence of the areas and populations to receive service from each of the proposals. The area and population data will, of course, be relevant to a conclusion with respect to whether a decision in this case should be based, in part, on the contingent comparative issue which is also to be specified.

21. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

22. In view of the foregoing, the Commission is unable to make the statutory finding that a grant of the applications would serve the public interest, convenience and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues set forth below.

23. Accordingly, IT IS ORDERED, That, pursuant to section 309 (e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposed operations and the availability of other primary aural (1 mV/m or greater in the case of FM) service to such area and populations.

2. To determine whether the transmitter sites proposed by the Boricua Broadcasting Corporation and Summit Broadcasting of

[2] Section 1.65 of the rules places upon an applicant the responsibility for the continuing accuracy and completeness of the information furnished in a pending application.

Puerto Rico, Inc., are satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would preclude an adequate proof of performance and satisfactory adjustment and maintenance of the proposed directional antenna system.

3. To determine whether the Cavallaro Broadcasting Corporation and the Vieques Radio Corporation are financially qualified to construct and operate their proposed stations.

4. To determine with respect to the application of the Boricua Broadcasting Corporation:

(a) Whether sufficient funds are available to stock subscribers to meet their commitments to purchase stock; and

(b) In the light of the evidence adduced pursuant to the foregoing, whether the Boricua Broadcasting Corporation is financially qualified to construct and operate its proposed station.

5. To determine with respect to the application of Summit Broadcasting of Puerto Rico, Inc.:

(a) The availability of a loan from a banking institution, the amount, rate of interest and other terms and conditions of the loan;

(b) Whether, if such loan is available and the personal guarantees of the principals of the corporation are required, Juan Rodriguez de Jesus and George A. Mayoral are willing to furnish such personal guarantees;

(c) Whether George A. Mayoral has sufficient funds available to meet his commitment to purchase corporate shares; and

(d) In the light of the evidence adduced pursuant to the above (a, b and c), whether Summit Broadcasting of Puerto Rico, Inc., is financially qualified to construct and operate its proposed station.

6. To determine the efforts made by Summit Broadcasting of Puerto Rico, Inc., to ascertain the community problems of the areas to be served and the means by which the applicant proposes to meet those problems.

7. To determine whether Summit Broadcasting of Puerto Rico, Inc., has complied with the provisions of section 1.65 of the Commission's rules by keeping the Commission advised of substantial and significant changes in the application and, if not, the effect of such non-compliance on its basic and/or comparative qualifications to be a Commission licensee.

8. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

9. To determine, in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would best serve the public interest.

10. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the applications should be granted.

24. IT IS FURTHER ORDERED, That, in the event of a grant of the application of the Cavallaro Broadcasting Corporation, or the application of Summit Broadcasting of Puerto Rico, Inc., the construction permit shall include the following condition:

> Permittee shall assume responsibility for the installation and adjustment of filter circuits or other equipment in the antenna systems of the proposed operation and any existing station which may be necessary to prevent adverse effects due to reradiation and/or internal cross-modulation. In addition, any objectionable problems of external cross-modulation shall be eliminated.

25. IT IS FURTHER ORDERED, That, in the event of a grant of the application of the Cavallaro Broadcasting Corporation, the Boricua Broadcasting Corporation or Summit Broadcasting of Puerto Rico, Inc., the construction permit shall include the following condition:

> The fundamental field strength on 1030 kHz, as determined by measurement at *any* location on Government property at the Sabana Seca, Puerto Rico, monitoring station, shall not exceed 15 mV/m. Additionally, in any event of interference to monitoring, directional finding or related operations at the government facility caused by either spurious or harmonic radiation, immediate corrective action as necessary shall be taken to eliminate the interference. This shall include responsibility for furnishing, installing, and adjusting suitable filter circuits, shielding, or other corrective devices which may be necessary to minimize harmonic or spurious radiation.

26. IT IS FURTHER ORDERED, That, in the event of a grant of the application of the Cavallaro Broadcasting Corporation, the construction permit shall include the following condition:

> Current distribution measurements shall be submitted to establish that the antenna towers have been toploaded to produce the electrical characteristics of essentially 204-degree towers, as proposed.

27. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

28. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the rules.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 74R-28

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WILLIAM A. CHAPMAN AND GEORGE K. CHAPMAN D.B.A. CHAPMAN RADIO AND TELEVISION CO., HOMEWOOD, ALA.	Docket No. 15461 File No. BPCT-3282
BIRMINGHAM BROADCASTING CO., BIRMINGHAM, ALA.	Docket No. 16761 File No. BPCT-3707
For Construction Permit for New Television Broadcast Station	

MEMORANDUM OPINION AND ORDER

(Adopted January 25, 1974; Released January 29, 1974)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER ABSENT.

1. Before the Review Board is a petition to delete issue, filed December 12, 1973, by Birmingham Broadcasting Company (BBC), seeking deletion of the following issue specified by the Review Board in a Memorandum Opinion and Order, 38 FCC 2d 871, 26 RR 2d 395, released January 10, 1973:[1]

> To determine in light of the conviction of Oscar E. Hyde for violations of 18 U.S.C. § 1951, whether Oscar E. Hyde and Birmingham Broadcasting Company are qualified to own and operate a television broadcast station in Birmingham, Alabama.[2]

2. BBC's request for deletion is premised on a judgment rendered by the United States District Court for the Northern District of Alabama on December 4, 1973. The Judge, in essence, ordered Mr. Hyde's complete disassociation with BBC and found that BBC and its principals were ignorant of Mr. Hyde's activities which led to his conviction.[3] The Broadcast Bureau opposes the petition to delete because in its view the judgment does not effect a reversal of the prior administrative rulings which prevented BBC from amending its application so as to delete Hyde.

3. The Board will deny the petition to delete. Although the court decision orders Hyde's disassociation from the applicant and would seem to absolve BBC of any knowledge of or connection with Hyde's criminal activities, the fact remains that Hyde is still considered to be a principal of BBC by the Commission since the amendments seeking to delete Hyde have not been granted. The Board is therefore

[1] An opposition was filed by the Broadcast Bureau on December 26, 1973.

[2] Mr. Hyde was a principal of BBC when the application was filed but resigned his office after being indicted by a Federal grand jury. Although Hyde made a gift of his stock to a college subsequent to his conviction, the applicant has not been permitted to amend its application to delete Hyde.

[3] The petition of BBC, filed December 12, 1973, for leave to amend its application to reflect the Federal Court judgment was granted by the Administrative Law Judge, FCC 74M-34, released January 9, 1974.

unable to grant BBC's request for deletion and any questions concerning Hyde's association with the applicant must be left to inquiry at the hearing.

4. Accordingly, IT IS ORDERED, That the petition to delete issue, filed December 12, 1973, by Birmingham Broadcasting Company, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 74-58

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
COLORADO WEST BROADCASTING, INC., GLENWOOD SPRINGS, COLO.	Docket No. 19588 File No. BPH-7646
GLENWOOD BROADCASTING, INC., GLENWOOD SPRINGS, COLO.	Docket No. 19589 File No. BPH-7707
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1974; Released January 28, 1974)

BY THE COMMISSION:

1. Presently before us are the following: (a) an application for review of a Review Board Memorandum Opinion and Order (FCC 73R-291, released August 16, 1973) filed August 23, 1973, by Glenwood Broadcasting, Inc. (Glenwood); (b) a supplement to the application for review filed August 27, 1973, by Glenwood; (c) an opposition filed August 31, 1973, by the Chief of the Broadcast Bureau; (d) an opposition filed September 5, 1973, by Colorado West Broadcasting, Inc. (Colorado West); and (e) a reply filed September 17, 1973, by Glenwood.

2. Glenwood's application for review presents no question of law, fact or policy which merits Commission consideration and, accordingly, it will be denied. In our opinion the Review Board (Board) correctly concluded that Glenwood failed, in several respects, to meet its obligations as a petitioner seeking enlargement of hearing issues in an adjudicatory proceeding. Thus, the determination to deny Glenwood's petition, we believe, was well within the Board's discretionary province and did not constitute a clearly unauthorized action. Nevertheless, based upon all of the information now before us, we are persuaded that the public interest requires reconsideration of Glenwood's petition to enlarge hearing issues in this proceeding. This is particularly so, we believe, because of the seriousness of charges raised against Colorado West by Glenwood and, equally important, because Glenwood has now submitted the information which would have permitted the consideration of the merits of its request by the Board.[1]

3. We have thoroughly considered all of the information now before us in support thereof. We conclude that Glenwood has indeed alleged sufficient facts which raise substantial and material questions con-

[1] In a supplement to its application for review, Glenwood has submitted an affidavit of Michael J. Garrish affirming the truthfulness of his prior statement, which was initially submitted in support of the petition to enlarge hearing issues. Also, in the pleadings now before us, Glenwood has set forth the reasons why such an affidavit could not have been submitted when the petition to enlarge issues was filed, and, in the absence of a contrary showing, we are not prepared to say that these reasons are either unbelievable or unacceptable.

cerning the past involvement of one of Colorado West's principals (William R. Dunaway) in the operation of an alleged illegal translator station;[2] that the resolution of these factual questions are critical to any reasoned determination regarding Colorado West's qualifications to be a Commission licensee; and that the public interest, convenience and necessity require that these matters be fully explored in the evidentiary process.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 1.115(g) of the Commission's Rules, the application for review filed August 23, 1973, by Glenwood Broadcasting, Inc. IS DENIED.

5. IT IS FURTHER ORDERED, On the Commission's own motion pursuant to Section 4(j) of the Communications Act of 1934, as amended, That the record in this proceeding IS REOPENED; that the proceeding IS REMANDED to the presiding Administrative Law Judge; and that the hearing issues in this proceeding ARE ENLARGED by the addition of the following:

(a) To determine the facts and circumstances surrounding the operation of an unlicensed translator station in Aspen, Colorado, and Mr. William R. Dunaway's involvement in providing that translator station with the signal of Television Station KOA–TV, Denver, Colorado.

(b) To determine, in light of the evidence adduced under the preceding issue, the effect of Dunaway's conduct on Colorado West Broadcasting, Inc.'s basic and/or comparative qualifications to be a Commission licensee.

6. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under issues (a) and (b) added herein SHALL BE on Glenwood Broadcasting, Inc., and the burden of proof thereunder SHALL BE on Colorado West Broadcasting, Inc.

7. IT IS FURTHER ORDERED, That, in view of the action taken herein, the Administrative Law Judge IS DIRECTED to issue another Decision in this proceeding supplementing his Initial Decision (FCC 73D–66) released January 8, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] We agree with the Board that Glenwood has failed to aver sufficient facts concerning the participation of Glen Allen Lee Bell in this allegedly illegal translator station; that Bell's hearing testimony refutes Glenwood's contentions; and that additional hearing issues in this respect are not warranted.

F.C.C. 74-37

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
DATA TRANSMISSION CO.
Concerning a Declaratory Ruling as to a Transfer of Control Within the Purview of Sec. 310(b) of the Act.

JANUARY 9, 1974.

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GENTLEMEN: This is in response to your petition of November 12, 1973 in which you request on behalf of Data Transmission Co. (Datran) and (Datran's parent) Wyly Corporation (Wyly), controlled by the Wyly family, that this Commission issue a declaratory ruling that a proposed investment by Mr. Walter Haefner, a Swiss national, in Datran, a Commission permittee in the point to point microwave service, is not a transfer of control requiring the prior approval of this Commission in accordance with Section 310(b) of the Communications Act of 1934, as amended.

In your petition you indicate that Haefner, a citizen and resident of Switzerland, presently owns 9.6 percent of the outstanding shares of common stock of Wyly. You further indicate that Wyly owns ninety-nine (99) percent of the presently outstanding shares of Datran. Haefner proposes to loan Datran the sum of $20,000,000. In return for this sum Haefner, through his Haefner Holding Co., a wholly-owned Swiss Corporation, will receive 390,000 (10.9% of the outstanding) shares of common stock and $15,710,000 aggregate principal amount of convertible subordinate debentures of Datran. Haefner's convertible debentures will be convertible into 1,428,182 shares (19.04% of the authorized shares) of the common stock of Datran. However, the convertible debentures will contain a conversion restriction; conversion will not be allowed if such a conversion would result in a total alien ownership in Datran in excess of twenty (20) percent. Under Section

310(a)(4) of the Act alien ownership of capital stock in a corporation holding a Commission license is limited to twenty (20) percent.

This Commission has interpreted "control" under Section 310(b) as embracing every form of control, actual, legal, direct or indirect, negative or affirmative. However, this Commission has repeatedly stated that there is no exact formula by which it is bound to determine whether control of a permittee has been transferred. We must look at the specific circumstance presented and determine whether a transfer has occurred based on the facts of that case.

In this case you have stated that the Board of Directors and officers of Datran will retain responsibility for operation and control of The Datran System. Secondly, you state that Haefner has made positive representations (by way of provisions in the purchase agreement between Haefner, Datran and Wyly) that he has no intention of assuming actual or legal control of Datran within the meaning of Section 310(b) of the Act. Thirdly, you state that there will be a limitation on the debenture conversion rights to assure that alien shareholder interest in Datran does not exceed the percentage allowed by Section 310(a) of the Act. Lastly, your petition indicates that:

(a) Apart from the convertible subordinate debentures, Haefner's proposed stockholdings in Datran will be limited to 10.9% of the issued and outstanding shares of capital stock of Datran;

(b) Although no individual or group acting in privity appears to own a controlling block of Wyly stock, the Wyly family representatives, holding the personal and trust stock interest of the Wyly family, all of whom are U.S. citizens, exert effective control over Wyly by virtue of their stockholdings (11.4%) and proxies;

(c) Wyly will continue to own 85% of the issued and outstanding shares of stock in Datran;

(d) Haefner is neither a director nor an officer of Datran or of Wyly and does not propose to hold any such position in either company;

(e) Haefner's proposed investment in Datran will at no time be inconsistent with Section 310(a) of the Communications Act.

The above provisions appear to have been designed to prevent control of Datran from transferring to Haefner. However, as a practical matter we must face the realities of what an arrangement such as this portends for the future control of Datran. Of particular importance are certain negative covenants Haefner proposes to impose on Datran. These covenants preclude or limit Datran in undertaking various activities of a financial nature without Haefner's prior consent, e.g., selling shares of its common stock, merging with another corporation, selling or leasing its assets, purchasing stock of other corporations (other than wholly owned subsidiaries), and the making or guaranteeing of loans. The question raised by these covenants is whether such restrictions represent a transfer of control of Datran. In *Flathead Valley Broadcasters*, 5 RR 2d 74 (Rev. Bd. 1965), it was held that restrictions of the type proposed by Haefner, for the express purpose of protecting a lender's investment, do not necessarily represent a "transfer of control" requiring Commission approval. See also, *KSOO-TV, Inc.*, 19 RR 28 (1959); *L. B. Wilson, Inc.*, 25 RR 845 [Rev. Bd. 1963]; The North-

ern Corp., 15 FCC 60 (1949); *Atlantic Coast Broadcasting Corp. of Charleston*, 22 RR 1045 (1962). However, in *WWIZ, Inc.*, 36 FCC 561 (1964), we also indicated that so-called investor protection restrictions when combined with investor activity in the affairs of a corporation can and often do lead to the type of transfer of control requiring our approval. We have seen no indication that Haefner either has or proposes to engage in this type of control activity. Moreover, Haefner has expressly agreed never to interfere with the operations and/or common carrier functions of Datran. Therefore, while Haefner's restrictions limit the normal financial prerogatives of the Datran board of directors, we do not find that these negative covenants by themselves represent the type of transfer of corporate control envisioned by Section 310(b) of the Act.

In view of the showings made by Datran and Wyly, we find that the investment proposed by Haefner does not appear to be a transfer of control within the purview of Section 310(b) of the Act.

In reaching this conclusion we do not now consider the impact on control of Datran which may result from the possible future conversion of the debentures by Haefner or other changes in stock ownership. If such activities are contemplated at some future period, a new assessment of all the factors bearing on control of Datran would have to be made at that time.

Commissioners Burch, chairman; Reid and Wiley concurred in the result.

By Direction of the Commission,
Vincent J. Mullins, *Secretary*.

F.C.C. 74-56

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
GENERAL REVISION OF SUBPART G, PART 73 OF THE COMMISSION'S RULES AND THE STANDARD OPERATING PROCEDURES, TO UPDATE AND SIMPLIFY THE RULES GOVERNING THE EMERGENCY BROADCAST SYSTEM (EBS)

ORDER

(Adopted January 9, 1974; Released January 23, 1974)

BY THE COMMISSION:

1. Efforts are being expended on a continuing basis to update and simplify the Rules and Regulations and the Standard Operating Procedures (SOP's) governing the operation of the Emergency Broadcast System (EBS). Changes to the rules and SOP's are made in conjunction with recommendations submitted by Working Groups I and V of the Broadcast Services Subcommittee, National Industry Advisory Committee (NIAC) and are as indicated below:

(a) Modifications are made to reflect the inclusion of National Public Radio (NPR) and Public Broadcast Service into the EBS.

(b) Section 73.901, Scope of Subpart, has been modified and an authority statement has been included.

(c) The definition for Emergency Broadcast System has been moved from Section 73.914 to 73.903 since this definition is the key to all actions in the subpart.

(d) Section 73.905, Emergency Action Notification System, has been deleted while incorporating, in Section 73.931, the various dissemination methods by which all licensees and regulated services of the FCC and participating non-government industry entities are notified of the existence of emergency situations. The use of the term Emergency Action Notification System has led to confusion in the past and is therefore eliminated to provide for better understanding.

(e) The definition for Emergency Action Notification (EAN) has been moved from Section 73.907 to 73.905 since the EAN is a key element in the EBS.

(f) Section 73.908, Emergency Action Condition, has been eliminated. This term is considered to be unnecessary.

(g) Section 73.908, Emergency Action Condition Termination, has been retitled Emergency Action Termination, to conform to elimination of Section 73.908.

(h) Section 73.914, Emergency Action Checklist for the Emergency Broadcast System (EBS), has been retitled EBS Checklist and renumbered 73.910.

(i) The former Section 73.910 has been eliminated and the publication, Detailed Non-government Activation and Termination Procedures for the Emergency Broadcast System, has been revoked. All material in this publication appears in other readily available documents such as the Rules and Regulations and the Standard Operating Procedures.

(j) The definition for the Standard Operating Procedures (SOP's) and Authentication Word Lists formerly combined in Section 73.911 have been separated and are now in 73.911, Standard Operating Procedures and 73.912, Authenticator Word Lists. The Standard Operating Procedures (SOP's) have been changed to reflect three SOP's used in conjunction with the EBS as opposed to the two SOP's previously in use. SOP–1, EBS Activation and Termination Procedures, is used during an actual activation of the EBS. SOP–2, Test Procedures, formerly incorporated in SOP–1, is used during tests of various facets of the EBS. SOP–3, Backup Procedures, contains the information found in former SOP–3.

(k) The definitions under Sections 73.917, Primary Station Emergency Broadcast System (EBS) Authorization and 73.918, Alternate Station Emergency Broadcast System (EBS) Authorization, have been incorporated into Section 73.917, Primary or Alternate Station—Emergency Broadcast System (EBS).

(l) The definitions under Sections 73.919, Primary Relay Station Emergency Broadcast System (EBS) Authorization and 73.920, Alternate Relay Station Emergency Broadcast System (EBS) Authorization, have been incorporated into Section 73.918, Primary Relay or Alternate Relay Station—Emergency Broadcast System (EBS).

(m) Section 73.921, Non-Participating Station, has been renumbered Section 73.919 for editorial purposes.

(n) Former Section 73.922, Detailed State Emergency Broadcast System (EBS) Operational Plan, has been redesignated Section 73.920 and the word "Detailed" eliminated.

(o) Former Section 73.923, Operational (Local) Area, has been renumbered Section 73.921 for editorial purposes.

(p) Former Section 73.924, Common Program Control Broadcast Station, has been renumbered Section 73.922 and the title changed to read Common Program Control Station (CPCS).

(q) Sections 73.923, State Relay Network and 73.924, State Network Primary Control Station, have been added to the definitions. These terms were both formerly and currently used and definitions are necessary to ensure clarity.

(r) Section 73.931 is retitled, Dissemination of Emergency Action Notification, vice Notification of Emergency Action Condition, to conform to elimination of Section 73.908.

(s) In Section 73.933, the announcements previously found therein have been eliminated. Reference is made to the EBS Checklists where they may be readily located.

(t) Section 73.934, Termination of Emergency Action Condition has been deleted and the instructions for termination of an emergency situation have been incorporated in Section 73.933.

(u) The titles to Section 73.936 and 73.937 have been modified to eliminate the words—"Action Condition". In addition, the announce-

ments contained in these sections have been deleted since they appear in the EBS Checklists and reference to this fact has been made in the appropriate paragraphs.

(v) Section 73.961 has been retitled, Tests of the Emergency Broadcast System Procedures. Further, initiation of separate AP and UPI Test Transmissions to AM, FM and TV broadcast stations on the Radio Wire Teletype Networks is now a maximum of twice a month on a random basis at times of their choice in lieu of the previous requirement for weekly tests.

(w) Section 73.962 now makes provision for random or scheduled Closed Circuit Tests of the EBS. Unless a random Closed Test has been selected, the FCC will notify the Networks, AT&T and Wire Services of the selected time window for the test four working days (holidays excluded) prior to the test. Also, a termination message has been added to the Closed Circuit Test procedures to bring this test into conformity with an actual EBS operation.

(x) Standard Operating Procedures.

(1) As indicated above, the three SOP's are now provided for.

(2) The SOP's are reformed to permit operators to follow step-by-step procedures to insure compliance with requirements.

(3) The Weekly AP and UPI Test Transmission is redesignated the Periodic AP and UPI Test Transmission.

(4) SOP–3 is amended to provide for a Closed Circuit Test Termination Message.

2. Because of the amendments to Subpart G, it is necessary to make editorial changes to Sections 73.98(b) and (g), 73.298(b) and (f), 73.597(b) and (f) and 73.675(b) and (f).

3. IT IS ORDERED, That effective March 15, 1974, Part 73 of the Commission's Rules and Regulations IS AMENDED as set forth in Appendix A and the Standard Operating Procedures are approved as set forth in Appendix B.

4. Authority for these amendments is set out in Section 1, 4(i) and (o), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), and 303(r). Because these amendments are procedural in nature, the prior notice provisions of 5 U.S.C. 553 are inapplicable.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

Attachments.

APPENDIX A

Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended, as follows:

1. In Sections 73.98 paragraphs (b) and (g) are amended to read as follows:

73.98 Operation during emergency.

* * * * * * *

(b) When emergency operation is conducted under a State-Level EBS Operational Plan, the attention signal described in section 73.906 may be employed.

* * * * * * *

(g) If the Emergency Broadcast System (EBS) is activated at the National-Level while non-EBS emergency operation under this section is in progress, the EBS shall take precedence.

2. In Section 73.298 paragraphs (b) and (f) are amended to read as follows:

73.298 Operation during emergency.

* * * * * * *

(b) When emergency operation is conducted under a State-Level EBS Operational Plan, the attention signal described in section 73.906 may be employed.

* * * * * * *

(f) If the Emergency Broadcast System (EBS) is activated at the National-Level while non-EBS emergency operation under this section is in progress, the EBS shall take precedence.

3. In Section 73.597 paragraphs (b) and (f) are amended to read as follows:

73.597 Operation during emergency.

* * * * * * *

(b) When emergency operation is conducted under a State-Level EBS Operational Plan, the attention signal described in section 73.906 may be employed.

* * * * * * *

(f) If the Emergency Broadcast System (EBS) is activated at the National-Level while non-EBS emergency operation under this section is in progress, the EBS shall take precedence.

4. In Section 73.675 paragraphs (b) and (f) are amended to read as follows:

73.675 Operation during emergency.

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(b) When emergency operation is conducted under a State-Level EBS Operational Plan, the attention signal described in section 73.906 may be employed.

* * * * * * *

(f) If the Emergency Broadcast System (EBS) is activated at the National-Level while non-EBS emergency operation under this section is in progress, the EBS shall take precedence.

5. Subpart G, Part 73 is revised to read as follows:

Subpart G—Emergency Broadcast System

73.901 Scope of Subpart.
73.902 Objectives of subpart.

DEFINITIONS

73.903 Emergency Broadcast System (EBS).
73.904 Licensee.
73.905 Emergency Action Notification (EAN).
73.906 Attention Signal.
73.909 Emergency Action Termination.
73.910 EBS Checklist.
73.911 Standard Operating Procedures (SOP's).
73.912 Authenticator Word Lists.
73.913 Basic Emergency Broadcast System (EBS) Plan.
73.915 NIAC Order.
73.916 Emergency Broadcast System (EBS) Authorization.
73.917 Primary or Alternate Station—Emergency Broadcast System (EBS).
73.918 Primary Relay or Alternate Relay Station—Emergency Broadcast System (EBS).
73.919 Non-Participating Station.
73.920 State Emergency Broadcast System (EBS) Operational Plan.
73.921 Operational (Local) Area.
73.922 Common Program Control Station (CPCS).
73.923 State Relay Network.
73.924 State Network Primary Control Station.
73.925 Emergency Broadcast System (EBS) Programming Priorities.

PARTICIPATION

73.926 Participation in the Emergency Broadcast System (EBS).
73.927 Participation by Communications Common Carriers.

EMERGENCY ACTIONS

73.931 Dissemination of Emergency Action Notification.
73.932 Radio Monitoring Requirement.
73.933 Emergency Broadcast System (EBS) Operation During A National-Level Emergency.

DAY-TO-DAY EMERGENCY OPERATION

73.935 Day-to-day emergencies posing a threat to the safety of life and property; State-Level and Operational (Local) Area-Level Emergency Action Notification.
73.936 Emergency Broadcast System (EBS) Operation During A State-Level Emergency.
73.937 Emergency Broadcast System (EBS) Operation During An Operational (Local) Area-Level Emergency.

TESTS

73.961 Tests of the Emergency Broadcast System Procedures.
73.962 Closed Circuit Tests of Approved National-Level Interconnecting Systems and Facilities of the Emergency Broadcast System (EBS).

SCOPE AND OBJECTIVES

§ 73.901 Scope of subpart.

This subpart contains rules and regulations providing for an Emergency Broadcast System (EBS). It applies to all broadcast stations under FCC jurisdiction, and is issued under authority of sections 1, 4(i), (o) and 303(r) of the Communications Act of 1934, as amended.

§ 73.902 Objectives of subpart.

The objectives of this subpart are to provide a means for the distribution of Emergency Action Notifications and Emergency Action Terminations to licensees and regulated services of the Federal Communications Commission, non-government industry entities, and to the general public. Provision is also made for operation of participating broadcast stations and other non-government industry entities on a voluntary, organized basis during emergency situations for the purpose of providing the President and the Federal government, as well as heads of State and local governments, or their designated representatives, with a means of communicating with the general public. Participation in the EBS at the State and Operational (Local) Area levels is at the discretion of broadcast station management.

DEFINITIONS

§ 73.903 Emergency Broadcast System (EBS).

The EBS is composed of AM, FM and TV broadcast stations and non-government industry entities operating on a voluntary, organized basis during emergencies at National, State or Operational (Local) Area levels.

§ 73.904 Licensee.

The term "Licensee" as used in this subpart means the holder of a broadcast station license granted or continued in force under authority of the Communications Act of 1934, as amended. Such licensees include any AM, FM, or TV station holding a valid license, program test authorization, or other authorization permitting regular broadcast operation.

§ 73.905 Emergency Action Notification (EAN).

The Emergency Action Notification (EAN) is the notice to all licensees and regulated services of the FCC, participating non-government industry entities, and to the general public, of the existence of an emergency situation. The EAN is distributed to non-government entities only in accordance with Section 73.931 of this subpart of the Rules and Regulations.

§ 73.906 Attention Signal.

The signaling arrangement whereby muted receivers maintained by AM, FM, and TV broadcast stations are activated for the receipt of emergency cueing announcements and broadcasts, is as follows:

(a) Cut the transmitter carrier for 5 seconds. (Sound carrier only for TV stations.)

(b) Return carrier to the air for 5 seconds.

(c) Cut transmitter carrier for 5 seconds. (Sound carrier only for TV stations.)

(d) Return carrier to the air.

(e) Broadcast 1,000 hertz steady-state tone for 15 seconds.

§ 73.909 Emergency Action Termination.

The Emergency Action Termination is the notice to all licensees and regulated services of the FCC, participating non-government industry entities and to the general public of the termination of an emergency situation. This termination is distributed to non-government entities in accordance with this subpart of the Rules and Regulations and will be disseminated in the same manner as the dissemination of the EAN.

§ 73.910 EBS Checklist.

This is a document to be posted at broadcast operating positions of AM, FM, and TV broadcast stations. It states in summary form the actions to be taken by that station's personnel upon receipt of the Emergency Action Notification, Termination or Test Messages.

§ 73.911 Standard Operating Procedures (SOP's).

The SOP's contain detailed operational instructions which are used for activating, terminating and testing the National-Level EBS. They are issued by the FCC to specified control points of the national Radio and Television Broadcast Networks (ABC, CBS, MBS, NBC, NPR, UPI-Audio, ABC–TV, CBS–TV, NBC–TV and PBS), the American Telephone and Telegraph Company (AT&T), the Associated Press (AP) and the United Press International (UPI).

(a) SOP–1, EBS Activation and Termination Procedures. This SOP contains the detailed operational and authentication procedures for activation, operation, and termination of the EBS in response to an actual National emergency situation.

(b) SOP–2, EBS Test Transmissions. This SOP contains the detailed operational and authentication procedures for testing the EBS.

(c) SOP–3, EBS Backup Procedures. This SOP contains the detailed operational and authentication procedures to be used in event the procedures in SOP–1 cannot function.

§ 73.912 Authenticator Word Lists.

These lists are issued every six months by the FCC and are used in conjunction with procedures contained in the EBS Checklist and SOP's for tests or actual National emergency situations.

(a) EBS Authenticator List—Red Envelope. This document is used for authentication purposes in conjunction with the procedures contained in EBS Checklists, SOP–1, SOP–2, and SOP–3. It is issued to all broadcast stations and specified control points (National Radio and TV Broadcast Networks, AT&T and AP/UPI).

(b) EBS Authenticator List (Voice)—White Envelope.

This document is used for caller identification purposes in conjunction with the procedures in SOP–3 and is issued to the above specified control points.

§ 73.913 Basic Emergency Broadcast System (EBS) Plan.

The Basic EBS Plan contains guidance to all non-government entities for the distribution of emergency information and instructions covering a broad range of emergency contingencies posing a threat to the safety of life or property.

§ 73.915 NIAC Order.

This is a service order previously filed with AT&T providing for program origination reconfiguration of the major Radio and Television Networks voluntarily participating in the National-Level EBS. Participating networks are:

(a) American Broadcasting Company (ABC and ABC–TV)

(b) Columbia Broadcasting System (CBS and CBS–TV)

(c) Intermountain Network (IMN)
(d) Mutual Broadcasting System (MBS)
(e) National Broadcasting Company (NBC and NBC–TV)
(f) National Public Radio (NPR)
(g) Public Broadcast Service (PBS)
(h) United Press International Audio (UPI–Audio)

NIAC Orders must meet White House Requirements and will be activated only in accordance with the FCC Rules and Regulations.

§ 73.916 Emergency Broadcast System (EBS) Authorization.

(a) This authorization is issued by the FCC to licensees of broadcast stations to permit operation on a voluntary, organized basis during a National emergency consistent with the provisions of this subpart of the Rules and Regulations. This authorization will remain in effect during the period of the initial license and subsequent renewals unless returned by the holder or suspended, modified or withdrawn by the Commission.

(b) Authorizations are issued to one or more broadcast stations for participation in the National-Level EBS as Primary or Alternate Stations or Primary Relay or Alternate Relay Stations.

(c) An EBS Authorization is not required in order to participate on a voluntary, organized basis in State and Operational (Local) Area Emergency Broadcast System operations as set forth in Section 73.935.

§ 73.917 Primary or Alternate Station—Emergency Broadcast System (EBS).

(a) A Primary Station broadcasts a common emergency program for the duration of the activation of the National-Level EBS. The EBS transmissions of such stations are intended for direct public reception.

(b) An Alternate Station removes its carrier from the air during the activation period, and stands by in operational readiness to assume broadcasting responsibilities in the event the Primary Station is unable to carry out its operational functions.

§ 73.918 Primary Relay or Alternate Relay Station-Emergency Broadcast System (EBS).

(a) A Primary Relay Station is an FM or TV station responsible for relay service of National-Level common emergency programming and also functions as a part of a State Relay Network.

(b) An Alternate Relay station removes its carrier from the air during the activation period, and stands by in operational readiness to assume broadcasting responsibilities in the event the Primary Relay Station is unable to carry out its operational function.

§ 73.919 Non-participating Station.

This is a broadcast station which is not voluntarily participating in the National-Level EBS and does not hold an EBS Authorization. Such stations are required to remove their carriers from the air and monitor for emergency action termination in accordance with the instructions in the EBS Checklist for Non-Participating Stations.

§ 73.920 State Emergency Broadcast System (EBS) Operational Plan.

This plan contains the necessary guidance for State and Local officials to communicate with the general public during a State or local emergency situation.

§ 73.921 Operational (Local) Area.

This is a geographical area which encompasses a number of contiguous communities, as determined by the State Industry Advisory Committee (SIAC) and as shown in the State EBS Operational Plan.

§ 73.922 Common Program Control Station (CPCS).

This is the Primary Station in an Operational (Local) Area which is responsible for coordinating the carriage of a common emergency program for its area. If it is unable to carry out this function other Primary and Alternate Stations in progressive order in the Operational (Local) Area will be assigned the responsibility as indicated in the State EBS Operational Plan.

§ 73.923 State Relay Network.

A State Relay Network is a relay network composed primarily of FM stations and, if necessary, augmented by TV stations and leased common carrier communications facilities, for disseminating statewide emergency programming originated by the Governor or his designated representatives.

§ 73.924 State Network Primary Control Station.

A State Network Primary Control Station is an FM station that acts as the originating station for the State Relay Network, and is programmed directly by the Governor or his designated representatives. A TV station may also fill the function in event no qualified FM station is available.

§ 73.925 Emergency Broadcast System (EBS) Programming Priorities.

(a) Program priorities for EBS are as follows:
Priority One—Presidential Messages.
Priority Two—State Programming.
Priority Three—Operational (Local) Area Programming.
Priority Four—National Programming and News.

(b) Participating stations that remain on the air during a National emergency situation must carry Presidential Messages "live" at the time of transmission. Activation of the National-Level EBS will preempt operation of the State or Operational (Local) Area EBS.

(c) During a National emergency the Radio and Television (aural) Broadcast Network program distribution facilities shall be reserved exclusively for the distribution of Presidential Messages and National Programming and News. National Programming and News which is not broadcast at the time of original transmission shall be recorded locally by the CPCS for broadcast at the earliest opportunity consistent with Operational (Local) Area requirements.

PARTICIPATION

§ 73.926 Participation in the Emergency Broadcast System (EBS).

(a) The FCC will send to new licensees an EBS authorization and a letter requesting their voluntary participation in the EBS. Stations are requested to accept or decline this authorization within 30 days of receipt. Should the request be declined, the EBS Authorization should be returned to FCC. In either event, an appropriate EBS checklist and EBS station designation will be forwarded to the station manager.

(b) Any existing licensee who is not already a participant and desires to participate voluntarily in the National-Level EBS must submit a written request to FCC. The FCC may then issue an EBS Authorization.

(c) Any station may withdraw from EBS participation by giving 30 days written notice and by returning its EBS Authorization to the FCC.

(d) Any station that is denied participation in the National-Level EBS for any reason may apply to the Commission for review of the staff denial in accordance with § 1.115 of the Rules and Regulations.

(e) Any AM, FM, or TV broadcast station licensee may, at the discretion of management, voluntarily participate in the State-Level and Operational (Local) Area-Level EBS in accordance with the provisions of the State EBS Operational Plan. An EBS Authorization is not required.

§ 73.927 Participation by Communications Common Carriers.

(a) Communications common carriers which have facilities available in place may, without charge, connect an independent broadcast station to networks operated by ABC, CBS, IMN, MBS, NBC, NPR, or PBS for the duration of a National Emergency; provided the station possesses an EBS Authorization and has in service a local channel from the station studio or transmitter directly to the nearest telephone company Principal Central Office (toll test).

(b) During the activation of the National-Level EBS, communications common carriers which have facilities in place may, without charge, connect an originating source associated with an appropriate NIAC Order from the nearest Exchange to a selected Test Center and then to the Radio and Television (aural) Broadcast Networks for the duration of the emergency; provided that:

(1) The originating source has in service a local channel from the originating point to the nearest Exchange.

(2) A NIAC Order covering this service is requested by the White House.

(c) Upon receipt of the Emergency Action Termination the communications common carriers shall:

(1) Disconnect the participating independent station.

(2) Disconnect the origination source.

(3) Restore the networks to their original configurations.

(d) During Closed Circuit Tests of the National-Level EBS using NIAC ORDERS, communications common carriers which have facilities in place may, without charge, connect an originating source associated with an appropriate NIAC Order from the nearest Exchange to a selected Test Center, and then to the Radio Networks. No participating independent station may be connected during the test unless authorized by the FCC. Upon termination of tests the Radio Networks shall be restored to their original configuration.

(e) Every such carrier rendering any such free service shall make and file, in duplicate, with the FCC, on or before the 31st day of July and on or before the 31st day of January of each year, reports covering the periods of 6 months ending on the 30th day of June and the 31st day of December respectively, next prior to said dates. These reports shall show in detail what free service was rendered pursuant to this rule and the charges in dollars which would have accrued to the carrier for such services rendered if charges therefor had been collected at the published tariff rates.

EMERGENCY ACTIONS

§ 73.931 Dissemination of Emergency Action Notification.

(a) National-Level. The Emergency Action Notification (EAN) will be released at this level upon request of the White House. The EAN message is disseminated from the origination point on a dedicated teletypewriter network to control points of the Radio and TV Broadcast Networks (ABC, CBS, MBS, NBC, NPR, UPI-Audio, ABC–TV, CBS–TV, NBC–TV and PBS), AT&T, AP and UPI. The EAN is then further disseminated as follows by:

(1) The internal alerting facilities of the Radio and Television Broadcast Networks to all affiliates.

(2) The AP/UPI Radio Wire Teletype Networks to all subscribers (AM, FM, TV broadcast and other stations).

(3) Off-the-air monitoring of AM, FM, and TV broadcast stations by AM, FM, and TV broadcast stations and other licensees and regulated services.

Receipt of the EAN via any one of the above arrangements is sufficient to begin emergency actions set forth in § 73.933.

(b) State-Level. The dissemination arrangements for the EAN at this level originate from State authorities to the State Network Primary Control Station. The management of this station may, at its discretion, release the EAN at this level under the provisions of § 73.935(2). The EAN will be disseminated in accordance with § 73.931(a)(3) and the State EBS Operational Plan.

(c) Operational (Local) Area-Level. The dissemination arrangements for the EAN at this level originate from Operational (Local) Area authorities to the Primary Station designated as the CPCS for the Area. The management of this Primary Station may, at its discretion, release the EAN at this level under the provisions of § 73.935(a). The EAN will be disseminated in accordance with § 73.931(a)(3) and the State EBS Operational Plan.

§ 73.932 Radio Monitoring Requirement.

(a) To insure effective off-the-air monitoring (§ 73.931(a)(3)) all broadcast station licensees must install and operate, during their hours of broadcast operation, equipment capable of receiving Emergency Action Notifications and Terminations transmitted by other radio broadcast stations. This equipment must be maintained in operative condition, including arrangements for human listening watch or automatic alarm devices, and shall have its termination at each transmitter control point. Where more than one broadcast transmitter is controlled from a common point by the same operator, only one receiver is required at that point.

(b) Off-the-air monitoring assignment of each broadcast station is specified in the State EBS Operational Plan.

(c) Prior to commencing routine operation or originating any emissions under program test, equipment test, experimental, or other authorizations or for any other purpose, licensees or permittees shall first ascertain whether an EAN message has been released by any one or all of the following methods:

(1) Monitor the radio and TV network facilities.

(2) Check the Radio Press Wire Service (AP/UPI).

(3) Monitor the Primary Station and/or the Primary Relay Station for your Operational (Local) Area.

If so, operation shall be in accordance with this subpart of the Rules.

§ 73.933 Emergency Broadcast System (EBS) Operation During A National-Level Emergency.

(a) An EBS Checklist will be posted at operating positions of all broadcast stations. This Checklist summarizes the procedures to be followed upon receipt of a National-Level Emergency Action Notification or Termination Message in accordance with arrangements described in § 73.931(a).

(b) Immediately upon receipt of an EAN or Emergency Action Termination message all licensees will proceed as follows:

(1) Monitor the radio and TV network facilities for further instructions from the network control point.

(2) Check the Radio Press Wire Service (AP/UPI). Verify the authenticity of message with current EBS Authenticator List (Red Envelope).

(3) Monitor the Primary Station and/or the Primary Relay Station for your Operational (Local) Area for the receipt of any further instructions.

(4) Discontinue normal program and broadcast the following announcement: "We interrupt this program. This is a National Emergency. Important instructions will follow".

(5) Transmit the Emergency Action Notification Attention Signal as set forth in § 73.906.

(6)(i) "Primary Stations" will make the announcement as set forth in the EBS Checklist for Primary and Alternate Stations. Those TV broadcast stations holding a Primary Station EBS Authorization will continue operation and shall display the EBS or other appropriate slide during audio transmission. Stations broadcasting in a foreign language shall repeat the announcement in that language.

(ii) "Primary Relay Stations" will make the announcement as set forth in the EBS Checklist for Primary Relay and Alternate Relay Stations. Those TV broadcast stations holding a Primary Relay Station EBS Authorization will continue operation and shall display the EBS or other appropriate slide during audio transmission. Stations broadcasting primarily in a foreign language shall repeat the announcement in that language.

(iii) "Alternate Stations" will make the announcement as set forth in the EBS Checklist for Primary and Alternate Stations. TV broadcast stations shall display the EBS or other appropriate slide during the transmission procedure. Stations broadcasting in a foreign language shall repeat the announcement in that language. Following the announcement the Alternate Stations will remove its carrier from the air and stand by in operational readiness in accordance with the Checklist.

(iv) "Alternate Relay Stations" will make the announcement as set forth in the EBS Checklist for Primary Relay and Alternate Relay Stations. TV broadcast stations shall display the EBS or other appropriate slide during the transmission procedure. Stations broadcasting in a foreign language shall repeat the announcement in that language. Following the announcement the Alternate Relay Stations will remove its carrier from the air and stand by in operational readiness in accordance with the Checklist.

(v) "Non-Participating Stations" will make the announcement as set forth in the EBS Checklist for Non-Participating Stations. TV broadcast stations shall display the EBS or other appropriate slide during the transmission procedure. Stations broadcasting in a foreign language shall repeat the announcement in that language. Following the announcement the Non-Participating Station will remove its carrier from the air in accordance with the Checklist.

(7) Upon completion of the above transmission procedures:

(i) Primary Stations within an Operational (Local) Area will upon cue from the Common Program Control Station, begin broadcast of a common emer-

gency program. All stations shall carry a common emergency program until receipt of the Emergency Action Termination. Programming priorities are set forth in Section 73.925. Feeds will be provided by one or more of the following:

(a) Common Program Control Station for the Operational (Local) Area.

(b) Radio and Television Broadcast Networks.

(c) State Relay Networks.

(d) Primary Relay Station for the Operational (Local) Area.

(ii) Primary Relay Stations will begin common emergency program relay and distribution service.

(iii) Alternate Stations and Alternate Relay Stations within an Operational (Local) Area will now turn off their transmitters and stand by to begin broadcasting a common emergency program upon cue from a Primary or Alternate Relay Station which may be unable to continue operation for any reason.

(8) Standby Script:

(i) Upon completion of the EAN message the Standby Script shall be used only by Primary Stations (or stations required to assume that responsibility) until program material is available. The text of the Standby Script is contained in the EBS Checklists for Primary and Alternate Stations and for Primary Relay and Alternate Relay Stations.

(ii) In addition, Standby Script may be used thereafter, as fill material for the common emergency program for the Operational (Local) Area, upon cue from the Common Program Control Station in the Operational (Local) Area.

(9) A station which broadcasts primarily in a language other than English may broadcast in such foreign language following the broadcast in English.

(10) Broadcast stations in the International Broadcast Service will cease broadcasting immediately upon receipt of an Emergency Action Notification and will maintain radio silence. However, under certain conditions they may be issued appropriate emergency authorization by the FCC with concurrence of the Director, Office of Telecommunications Policy, in which event they will transmit only Federal government broadcasts or communications. The station's carrier must be removed from the air during periods of no broadcast or communications transmissions.

(11) Stations may broadcast their call letters during an emergency situation. State and Operational (Local) Area identifications shall also be given.

(12) All stations operating and identified with a particular Operational (Local) Area will broadcast a common emergency program until receipt of the Emergency Action Termination.

(13) Broadcast stations holding an EBS Authorization are specifically exempt from complying with § 73.52 (pertaining to maintenance of operating power) while operating under this subpart of the Rules.

(14) Upon receipt of an Emergency Action Termination Message all stations will follow the termination procedures set forth in the EBS Checklists.

(c) Stations originating emergency communications under this Section shall be deemed to have conferred rebroadcast authority, as required by Section 325(a) of the Communications Act of 1934 as amended, and Section 73.1207 of the Rules and Regulations, on other participating stations.

DAY-TO-DAY EMERGENCY OPERATION

§ 73.935 Day-To-Day Emergencies Posing a Threat to the Safety of Life And Property; State-Level and Operational (Local) Area-Level Emergency Action Notification.

(a) State-Level or Operational (Local) Area-Level. The Emergency Action Notification may be released at this level by AM, FM, and TV broadcast stations, at management's discretion, in connection with day-to-day emergency situations posing a threat to the safety of life and property. Examples of emergency situations which may warrant either an immediate or delayed response by the licensee are: tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, and civil disorders.

(b) Stations originating emergency communications under this section shall be deemed to have conferred rebroadcast authority, as required by section 325(a) of the Communications Act of 1934, as amended, and Section 73.1207 of the Rules and Regulations, on other participating stations.

§ 73.936 Emergency Broadcast System (EBS) Operation During A State-Level Emergency.

(a) An EBS Checklist will be posted at operating positions of all broadcast stations.

(b) Operations will be conducted in accordance with the provisions of the State-Level EBS Operational Plan.

(c) An EBS Authorization is not required for a broadcast station to participate in the operation of the State-Level EBS.

(d) Immediately upon receipt of a State-Level Emergency Action Notification or Emergency Action Termination message all licensees which are voluntarily participating, may, at the discretion of management, proceed as follows:

(1) Monitor the State Relay Network for receipt of any further instructions from the State Network Primary Control Stations.

(2) Monitor the Primary Station designated as the CPCS for your Operational (Local) Area for the receipt of any further instructions.

(3) Discontinue normal program operation and broadcast the following announcement: "We interrupt this program because of a statewide emergency. Important information will follow".

(4) Transmit the Emergency Action Notification Attention Signal as set forth in § 73.906.

(5) All licensees participating in the State-Level EBS will make the announcement as set forth in the EBS Checklists. TV broadcast stations should display the State EBS or State Association of Broadcasters slide during the transmission procedure. Stations broadcasting primarily in a foreign language shall repeat the announcement in that language.

(6) Upon completion of the above transmission procedures, resume normal programming until receipt of the cue from the CPCS for your Operational (Local) Area, or Primary Relay Station for the State EBS Network. At that time begin broadcasting the State-Level common emergency program received from one of the following sources:

(a) Common Program Control Station for your Operational (Local) Area.

(b) State Relay Network.

(c) Primary Relay Station for the Operational (Local) Area.

(7) All licensees may resume normal broadcast operations upon conclusion of the State-Level EBS broadcast.

§ 73.937 Emergency Broadcast System (EBS) Operation During An Operational (Local) Area Emergency.

(a) An EBS Checklist will be posted at operating positions of all broadcast stations.

(b) Operations will be conducted in accordance with the provisions of the State EBS Operational Plan.

(c) An EBS Authorization is not required for a broadcast station to participate in the operation of the local-level EBS.

(d) Immediately upon receipt of an Operational (Local) Area-Level Emergency Action Notification or Emergency Action Termination all licensees which are voluntarily participating, may, at the discretion of management, proceed as follows:

(1) Monitor the Primary Station designated as the CPCS for your Operational (Local) Area for the receipt of any further instructions.

(2) Monitor the Primary Relay Station for your Operational (Local) Area for the receipt of any further instructions.

(3) Discontinue normal program operation and broadcast the following announcement: "We interrupt this program because of a local emergency. Important information will follow".

(4) Transmit the Emergency Action Notification Attention Signal as set forth in § 73.906.

(5) All licensees participating in the Operational (Local) Area-Level EBS will make the announcement as set forth in the EBS Checklists. TV broadcast stations should display an Operational (Local) Area EBS slide during the transmission procedure. Stations broadcasting primarily in a foreign language shall repeat the announcement in that language.

(6) Upon completion of the above transmission procedures, resume normal programming until receipt of the cue from the CPCS for your Operational

(Local) Area. At that time begin broadcasting the common emergency program received from one of the following sources for your Operational (Local) Area:

(a) Common Program Control Station.

(b) Primary Relay Station.

(7) All licensees may resume normal broadcast operations upon conclusion of the Operational (Local) Area-Level EBS broadcast.

TESTS

§ 73.961 Tests of the Emergency Broadcast System Procedures.

Tests of the EBS procedures will be made at regular intervals with appropriate entries in the station operating log, as follows:

(a) Weekly "500" Net Test Transmissions. Test transmissions of the National-Level interconnection facilities will be conducted on a random basis once each week. The tests will originate on an alternate basis from one of two origination points over a dedicated government teletypewriter network to the control points of the Radio and Television Broadcast Networks, AT&T, AP and UPI. A dedicated automatic telephone network will be used for confirmation purposes between the origination points and AP and UPI. These tests will be in accordance with procedures set forth in EBS SOP–2 which is furnished to the non-government entities concerned.

(b) Periodic AP/UPI Test Transmissions. AP and UPI will separately conduct test transmissions to AM, FM and TV broadcast stations, on their Radio Wire Teletype Networks, a maximum of twice a month on a random basis at times of their choice. These tests will be conducted in accordance with procedures set forth in EBS SOP–2 which is furnished to the non-government entities concerned and the EBS Checklist furnished to all broadcast stations.

(c) Weekly Off-The-Air Monitor Tests will be conducted by all AM, FM, and TV broadcast stations once each week between the hours of 8:30 a.m. and local sunset. These tests will be conducted in accordance with procedures set forth in the EBS Checklist furnished to all broadcast stations.

(d) Tests of State program distribution interconnecting systems and facilities should be conducted on a day-to-day basis as periodic broadcast operations.

(e) Stations originating emergency communications under this section shall be deemed to have conferred rebroadcast authority, as required by section 325(a) of the Communications Act of 1934, as amended, and section 73.1207 of the Rules and Regulations.

(f) Operational (Local) Area common emergency program distribution interconnecting systems, facilities, and procedures shall be tested on a closed circuit basis to insure emergency readiness of such facilities in accordance with approved State EBS Operational Plans.

§ 73.962 Closed Circuit Tests of Approved National-Level Interconnecting Systems and Facilities of the Emergency Broadcast System (EBS).

(a) Tests of approved National-Level interconnecting systems and facilities of non-government entities voluntarily participating in the EBS will be conducted on a random or scheduled basis not more than once a month and not less than once every 3 months only after FCC approval. Time of test will be selected by both White House and National Industry Advisory Committee (NIAC) representatives in coordination with the Defense Commissioner, FCC. Unless a random Closed Circuit Test has been selected, the FCC will notify the Networks, AT&T and Wire Services of the selected time window, four working days (holidays excluded) prior to the Test.

(b) The details of these Closed Circuit Test procedures are contained in the EBS Checklists issued to all broadcast stations and in SOP–2 issued by the FCC to those non-Government entities concerned.

(c) The radio networks, AT&T, AP and UPI will receive notification of closed circuit tests of NIAC Orders by a Closed Circuit Test Activation Message, followed by a NIAC Order Request Message.

(d) The National-Level EBS will be tested on a closed circuit basis. These test broadcasts will originate from a point selected by the White House with program feed circuitry connected to the Telephone Company Toll Test Center at points indicated by the individual NIAC Orders. AT&T will interconnect, as required, the facilities of the Radio Broadcast Networks, ABC, CBS, MBS, NBC, NPR, UPI-Audio and the Intermountain (IMN) Radio Broadcast Network as

authorized by the NIAC Order associated with the Closed Circuit Test. The audio networks associated with the video networks of ABC–TV, CBS–TV, NBC–TV and PBS shall not be utilized during closed circuit tests. The telephone companies are not authorized to add any of the independent stations participating in the EBS unless authorized by the FCC. Authentication will be provided to the Telephone Company Toll Test Center responsible for the particular NIAC Order to be used as set forth in SOP–2. Authentication used in the Closed Circuit Test messages will be the test words printed on the outside of the EBS Authenticator List (Red Envelope).

(e) Closed Circuit Test procedures for Radio Network affiliates and AP/UPI subscribers are as follows:

(1) Notification of a Closed Circuit Test will be received in accordance with procedures set forth in § 73.931(a) (1) and (2) and the EBS Checklist.

(2) Immediately monitor your radio network (ABC, CBS, IMN, MBS, NBC, NPR and UPI-Audio) and check your AP/UPI Radio Wire Teletype Network machine for the receipt of the Closed Circuit Test Activation Message. Verify authenticity using the test words printed on the outside cover of the current issue of the EBS Authenticator List (Red Envelope). Television networks do not participate in the Closed Circuit Tests.

(3) Continue to monitor your radio network for talkup, and the Closed Circuit Test Program.

(4) Enter the time of receipt of the Closed Circuit Test in your station operating log.

(f) The Federal Communications Commission may request a report of a Closed Circuit Test as deemed appropriate in a format as prescribed by the Commission.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
HON. BENJAMIN S. ROSENTHAL, MEMBER OF U.S. CONGRESS
Concerning Fairness Doctrine Re Station WMCA, New York, N.Y.

JANUARY 29, 1974.

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

STRAUS BROADCASTING GROUP INC.,
Radio Station WMCA,
888 7th Ave.,
New York, N.Y. 10019

GENTLEMEN: This letter constitutes a Notice of Apparent Liability for forfeiture pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended, and is issued under authority delegated to the Chief of the Broadcast Bureau by Section 0.281 of the Commission's Rules.

On March 28, 1973 the Commission received a complaint against Radio Station WMCA, New York, New York filed by United States Congressman Benjamin S. Rosenthal (hereinafter complainant) in which he alleged that WMCA broadcast a personal attack against him on March 8, 1973 and failed to comply with the Commission's personal attack rule (Section 73.123(a) of the Commission's Rules and Regulations).

In the March 28 letter and correspondence dated June 6, 1973, complainant stated that Mr. Bob Grant, moderator of the "Bob Grant Show," on March 8, 1973 at approximately 12:45 p.m. broadcast an attack on his character and integrity; that the attack occurred when Mr. Grant called him a "coward"; that according to Webster's *Seventh New Collegiate Dictionary* a coward is a person who "shows ignoble fear or timidity"; that the attack occurred during a discussion of the nationwide meat boycott which was a controversial issue of public importance; that he was one of the leaders and organizers of the nationwide meat boycott; that upon learning of the personal attack from third parties he sent a telegram to the station requesting a copy of the transcript containing the attack; that the station sent "only a *partial* transcript . . . and the accompanying letter contained no offer of a reasonable opportunity to respond"; that the transcript the station sent did not contain a discussion of the meat boycott, but a full transcript would show that the boycott was discussed and that he was referred to during that discussion;[1] that Steve Grossman, pro-

[1] See Appendix A for copy of transcript sent to complainant by licensee.

ducer of the "Bob Grant Show", called him approximately two hours prior to the broadcast of the attack to request an interview regarding the high food prices; that he personally declined the interview; that Mr. Grossman again called and asked to speak to complainant's press secretary who told Mr. Grossman that complainant did not want to appear on Mr. Grant's show because he did not like the way Mr. Grant treats interviewees; and that Mr. Grossman, in reply to the press secretary, stated that complainant would never again be allowed to appear on WMCA.

Complainant also enclosed with his June 6 letter an April 10, 1973 letter to him written by Mr. R. Peter Straus, President of WMCA, which stated that Mr. Grossman's first call was placed before the broadcast and consisted of a request for complainant to comment on the meat boycott. However, Mr. Straus stated that the second call Mr. Grossman made occurred *after* the broadcast of the alleged personal attack and was placed for the purpose of informing complainant of the remarks made during the broadcast and to ask complainant his reasons for refusing to speak with Mr. Grant. Complainant, in his June 6 letter, disagreed with Mr. Straus' sequence of events and contended that both of Mr. Grossman's calls were placed *before* the broadcast of the alleged attack and that "at *no* time subsequent to the broadcast did station WMCA or any of its representatives attempt to notify me of the personal attack or offer a reasonable opportunity to respond."

This office, on June 20, 1973, sent an inquiry to you regarding Mr. Rosenthal's complaint in which it requested your comments. In correspondence dated July 18, 1973 you stated that the comments to which complainant referred were made during a conversation concerning ships;[2] that this discussion of ships was not of a controversial nature; that "the broadcast prior to the reference to the Congressman was, as far as we have been able to ascertain, completely unrelated to him and, indeed, did not deal with what could remotely be described as a controversial issue"; that complainant is correct in stating that he was sent only a partial transcript because ". . . since WMCA broadcasts dialog . . . virtually all of its 24-hour broadcast day, any transcript would necessarily be only "partial"; that the station sent him "the precise language used in referring to him plus the preceding minutes or so which led into that comment"; that WMCA as a matter of policy erases all tapes 3 weeks after the broadcast; that, however, as soon as Mr. Rosenthal's complaint was received the station transcribed that portion directly surrounding the attack and subsequently 3 weeks later erased the tape; that it was reasonable to assume that complainant was not interested in Mr. Grant's other remarks made during the show; that while the March 14 letter to him did not offer him a "reasonable opportunity to respond", Mr. Grossman made an oral offer to Mr. Rosenthal immediately after the broadcast of the alleged attack; that it was unfortunate that the station did not formally write the complainant to notify him of the attack and offer him a reasonable opportunity to respond; and that "moreover, the Congressman well knows, the microphones at WMCA are available to him—as they have been

[2] See Appendix A.

in the past and will be in the future—for whatever use he wishes to make of any reasonable segment of air time."

In reply to Mr. Straus' July 18 letter, complainant stated in correspondence received at the Commission on September 11, 1973 that the issues of what to do with the World War II liberty ships anchored along the Hudson River and the national meat boycott, which were discussed on the March 8 "Bob Grant Show," are both controversial issues of public importance; that the alleged attack occurred during a discussion of both issues; that Mr. Straus does not deny in his July 18 letter that the meat boycott was discussed on the March 8 broadcast; that the station's action of only sending a partial transcript while subsequently destroying the other portions of the show relating to him and the meat boycott "demonstrates callous irresponsibility"; that while two calls were placed to his office prior to the alleged attack on March 8, no call was made after the alleged attack offering him a reasonable opportunity to reply; and that no offer to reply has been made during the five months following the alleged attack.

On August 16, 1973 the Commission sent a further inquiry to you in which it requested affidavits from WMCA personnel with knowledge of the March 8 "Bob Grant Show" to state (1) the context in which Mr. Grant's remarks were made concerning complainant, and (2) whether prior to the alleged attack any references were made concerning complainant's position on the "meat boycott" or any other matter.

In reply to the Commission's August 16 inquiry you stated by letter dated September 16, 1973 that only Mr. Grant and Mr. Grossman recalled the March 8 broadcast "sufficiently clearly to have any personal knowledge . . ." of it, and enclosed their affidavits in response to the Commission's questions. Mr. Grant in his affidavit stated that during the March 8 program he "mentioned a meat boycott", and decided to call complainant for his comments regarding the boycott; that although he disagreed with complainant on various issues in the past he wanted to commend him for his stand on the meat boycott issue; that during his [Grant's] program Mr. Grossman notified him that complainant had refused the interview; that he informed the audience that complainant refused the interview based on his unhappiness with a past interview; that he further told the audience that he ". . . couldn't believe that the Congressman was afraid to come on with me and that he shouldn't let his personal feelings toward me get in the way of discussing a public issue"; and that the Congressman should lay aside his prejudices and let the public benefit from hearing his ideas. Mr. Grant concluded by stating that the above sequence of events happened about two hours before the broadcast of the alleged attack.

Mr. Grossman in his affidavit stated that on March 8, 1973 he placed a call to complainant to ask him to appear on the "Bob Grant Show" to discuss the meat boycott; that complainant refused the opportunity and expressed the view that he didn't "like" Mr. Grant; that he again called back complainant's office to inquire why he refused to appear on the show; that during the second call he spoke to the press secretary who informed him that the Congressman did not want to appear because he thought Mr. Grant was "inept"; and that "up to that point

the only mention Bob had made over the air of Rosenthal was when he gave the rundown of people we were going to contact for newsmaker calls . . ."

In correspondence dated October 1, 1973, counsel for complainant stated that after reading the affidavits from the station's personnel it was determined that two personal attacks were broadcast against complainant during the March 8 program; that the first attack occurred about 10:45 a.m. when Mr. Grant stated that he "couldn't believe that the Congressman was afraid" to appear on the March 8 broadcast; that the second attack occurred at 12:45 p.m. when Mr. Grant called complainant a coward; that both the 10:45 a.m. and 12:45 p.m. remarks constituted attacks on the complainant's integrity and character; that the first attack occurred during the discussion of the nationwide meat boycott and that while the second attack occurred two hours later it "clearly related back to the meat boycott discussion"; that the licensee failed to comply with the Commission's personal attack rules for either attack; that the statement made in the licensee's April 10 letter that WMCA advised complainant of the attack and offered him reply time was untrue; that assuming the statements made in the April 10 letter regarding Mr. Grossman's offer of time were unintentional errors, a repeat of those assertions in the licensee's June 6 letter was inexcusable; that Mr. Grossman's affidavit indicates that he called complainant twice on the day of the alleged attack but that both calls were made prior to the attack; that based on the above information it appears that WMCA has repeatedly filed false information designed to mislead the Commission; and that the first real offer of reply time was made to complainant at a September 18 meeting with licensee's counsel.

In correspondence dated October 12, 1973, counsel for WMCA stated that on September 18 a meeting was held with complainant's counsel and Mr. Douglas Bloomfield (complainant's Legislative Assistant); that during the meeting he reiterated WMCA's long standing offer to complainant of free time over its facilities to use in any way he desires; that a question arose at the meeting as to the length of time complainant should be given and that he advised complainant's counsel and Mr. Bloomfield that he would resolve the matter with the licensee; that on the same day after conferring with the licensee he advised Mr. Bloomfield that WMCA would give the Congressman 30 minutes of time; that Mr. Bloomfield told him that he would confer with complainant regarding the offer and call him back; and that he was never called back.

The personal attack rule (Section 73.123(a) of the Commission's Rules and Regulations) states that when during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack transmit to the person or group attacked: (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities. The mere mention of a person or group, or even certain

types of unfavorable references thereto, do not constitute personal attacks as defined by the Commission; bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events are exempt from the personal attack rule.

The threshold issue presented in this case is whether either of the alleged attacks constituted a personal attack within the meaning of Section 73.123(a). In the October 1 letter from complainant's counsel it is alleged that two personal attacks occurred on the March 8 broadcast. Counsel states that the first attack occurred at 10:45 a.m. and bases his conclusion on the following statement from Mr. Grant's September 7 affidavit:

> I also recall saying that I couldn't believe that the Congressman was afraid to come on with me and besides he shouldn't let his personal feelings toward me get in the way of discussing a public issue. I then went on to say something to the effect of, "So, Congressman, if you're listening, lay aside your own prejudices and let the public benefit from hearing you."

The second attack is alleged to have occurred at 12:45 p.m. when Mr. Grant referred to complainant in the following excerpt:

> GRANT: Well, when I hear about guys like Ben Rosenthal, I, I have to say I wish there were a thousand Bob Grants 'cause then you wouldn't have . . . wouldn't have . . . a coward like him in the United States Congress. Thank you for your call, sir.

You stated the following in your July 18 letter addressed to the Commission:

> In paragraph (d) of your letter, you call my attention to the requirements, under the Commission's Rules, when a personal attack has been made. Even though the attack was made here, as far as I know, in the context of something other than the presentation of a controversial issue, nevertheless, it was unfortunate that we did not write the Congressman formally advising him of the attack and offering him, under the Commission's Rules, an opportunity for reply—whether or not the unfortunate remark occurred within or outside of a discussion of a controversial issue.

It should be noted that at the time you made the above comment, complainant had only alleged that one personal attack had occurred on the March 8 broadcast (when he was called a coward).

The first attack, as noted above, is alleged to have occurred at 10:45 a.m. when Mr. Grant suggested that complainant might be afraid to be interviewed by him. It does not appear the use of the word "afraid" in the context of Mr. Grant's other statements on the March 8 broadcast constituted an attack on the honesty, character, integrity or like personal qualities of complainant. While the remarks might be considered as unfavorable to complainant, they did not constitute an attack within the meaning of Section 73.123(a), for they may relate to a reluctance to have a position examined, rather than to any alleged deficiency in character.

The second alleged attack occurred at 12:45 p.m. when Mr. Grant accused complainant of being a coward. *Webster's Seventh New Collegiate Dictionary* states that a coward is a person who shows ignoble (dishonorable) fear or timidity. Thus, a direct charge of cowardice, such as occurred here, is a direct attack upon character. It appears, therefore, that labelling a person as a coward constitutes an attack on a person's character within the meaning of Section 73.123(a).

The next issue is whether the 12:45 p.m. attack occurred during a discussion of a controversial issue of public importance. While it is clear that the 1973 nationwide meat boycott was a controversial issue of public importance, the crucial issue in this case is to determine whether the remarks made at 12:45 p.m. relate back to the discussion of the meat boycott which occurred at 10:45 a.m. You contend that the 12:45 p.m. attack only occurred during the discussion of "ships" and that the matters being discussed were not of a controversial nature. Complainant stated that Mr. Grossman contacted him on the day of the broadcast to specifically request that he discuss his role in the boycott; that he was recognized as one of the national leaders of the boycott; that the meat boycott at the time of the broadcast was a controversial issue of public importance; that at approximately 10:45 a.m. on March 8 Mr. Grant discussed the boycott; that the 12:45 p.m. attack related back to the 10:45 a.m. discussion of the boycott and his refusal to appear on the show to discuss his role in the boycott; and that the time gap between the meat boycott discussion at 10:45 a.m. and the 12:45 p.m. attack does not destroy the relationship between them.

It appears from Mr. Grant's affidavit that on March 8 at approximately 10:45 a.m. he did discuss the meat boycott and noted complainant's role in the boycott. It also appears that Mr. Grant during the same March 8 broadcast referred to complainant as a coward and based his remarks on complainant's earlier refusal to appear on his show to discuss the meat boycott. Therefore, the mention at 12:45 p.m. of complainant's name was clearly in reference to his refusal to appear to discuss the boycott since in the discussion of the World War II ships there was no reference to Mr. Rosenthal. Thus in the context of the events of this case it appears that the attack was related to and occurred within the context of the discussion of the meat boycott. Because we are ruling that the 12:45 p.m. attack occurred within the discussion of the meat boycott it is unnecessary to consider the merits of the other arguments presented by complainant as they relate to this issue.[3]

The last issue is whether the licensee complied with its obligations under Section 73.123(a) regarding the March 8 attack. In the initial correspondence of both complainant and licensee there seemed to be an important conflict as to the series of events. The licensee in its correspondence to complainant on April 10, and to the Commission on July 18, stated that Mr. Grossman telephoned twice on March 8 and that during the second call informed complainant of the attack and offered him a reasonable opportunity to respond. Complainant in his various correspondence to the Commission charged that the licensee's representations regarding Mr. Grossman's second call were untrue. Complainant contended that both of Mr. Grossman's calls were made before the 12:45 p.m. attack occurred and that the second call was answered by complainant's press secretary who informed Mr. Grossman of the reasons why complainant did not wish to appear on the "Bob

[3] Complainant also argued that the 12:45 p.m. attack occurred during the discussion of the merits of maintaining a mothball fleet of liberty ships in Haverstraw, New York, which is a controversial issue of public importance in New York City. In addition, complainant contended that Mr. Grant's remarks raised the question of whether "cowards" like complainant should be removed from Congress and that that issue is controversial and of public importance.

Grant Show." Complainant has continuously maintained his position that until the September 18 meeting between his representatives and counsel for the licensee no offer of reply time was made to him. The September 7 affidavit of Mr. Grossman appears to resolve the conflict as to the context of Mr. Grossman's second call on March 8. Mr. Grossman stated the following:

> I called back Rosenthal's office and got his press secretary. I asked him why Rosenthal wouldn't come on. The press secretary said he would ask him. He then came back and told me that Rosenthal said that Bob was inept and shouldn't be doing this type of radio newsmaker call. I said, "Thank you very much."
>
> Up to that point the only mention Bob had made over the air of Rosenthal was when he gave the rundown of people we were going to contact for newsmaker calls and said we'd try to talk to Ben Rosenthal, a local congressman, who was sponsoring a meat boycott.

This indicates that the second call involved a second refusal by complainant to appear, could only have been made before the 12:45 p.m. attack, and could not have contained an offer of *reply* time to the 12:45 p.m. attack. There are further contradictions as to when the first offer of reply time was made to complainant. However, the only important issue is whether an offer for a reasonable opportunity to reply was made within seven days of the attack. Section 73.123(a) places an affirmative obligation on the licensee to comply with its provisions. Therefore when a personal attack is broadcast the burden is on the licensee to demonstrate that it has met its affirmative obligations. This burden has not been met.

From the foregoing it appears that you violated Section 73.123(a) by broadcasting a personal attack and by failing within one week of the attack to offer complainant a reasonable opportunity to respond.

For failure to comply with the obligations attending the broadcast of a personal attack, you are subject to forfeiture pursuant to Section 503(b)(1)(B) of the Communications Act as amended. In view of the serious nature of these violations, the Commission has determined that you have incurred an apparent liability in the amount of one thousand dollars ($1,000) for willful or repeated failure to observe the requirements of Section 73.123(a) of the Commission's Rules.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $1,000 made payable to the Federal Communications Commission.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement must be signed by the licensee; a partner, if the licensee is a partnership; by an officer, if the licensee is a corporation; or by a duly elected or appointed official, if an unincorporated association. The statement may include any justification or any information that you desire to have considered. Upon such consideration it will be determined whether any forfeiture should be imposed, and if so whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case an order of forfeiture will be issued after expiration of the thirty-day period ordering that you pay the forfeiture in full.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON, *Chief, Broadcast Bureau.*

APPENDIX A

TRANSCRIPT—BOB GRANT SHOW, THURSDAY, MARCH 8 APPROX: 12:45 PM

GRANT: WMCA, hello.
CALLER: Mr. Grant?
GRANT: Yes.
CALLER: Oh, that's fine. I'm glad to hear it. I listen to you quite often. I want to speak with you about the ships . . . uh . . . that are laying up in Haverstraw. All right?
GRANT: I listening, sir. I'm all ears.
CALLER: Years ago, we had . . . uh . . . in the Newark area a ship way there and the first ship that was launched there was the Agawam and then it . . . when it went down . . . it didn't sink, but it leaked.
GRANT: Yeh?
CALLER: And what I wanted to tell you about . . . all those ships that were made there in Port Newark are laying up in Haverstraw.
GRANT: Why?
CALLER: Well, that's a question mark. I thought I'd let you know. Maybe some other people may like to know, too.
GRANT: All right. Thanks for the tip, pal.
CALLER: I worked on that first ship in Port Newark years ago.
GRANT: All right, pal. I'm glad for the information.
CALLER: You know Bob, Bob, I'm happy to talk to you. I hear you quite often in the morning.
GRANT: Thank you very much, sir.
CALLER: You're a great man. God bless you.
GRANT: Ah, get on with you now.
CALLER: No, I mean it from my heart.
GRANT: I know you do, pal, I know you do. Thanks, thanks, pal.
CALLER: You're a swell guy.
GRANT: Thank you, sir.
CALLER: Too bad there ain't more people like you on the air.
GRANT: Well, when I hear about guys like Ben Rosenthal, I, I have to say I wish there were a thousand Bob Grants 'cause then you wouldn't have . . . wouldn't have . . . a coward like him in the United States Congress. Thank you for your call, sir.
CALLER: I'm so glad that I . . .
GRANT: 489–1155 is our number.
[Commercial announcement.]

104–023—74——5

F.C.C. 74R–17

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WILLIAM D. HUNT, CAYCE, S.C. For Construction Permit	Docket No. 19569 File No. BPH–7658

APPEARANCES

Donald E. Bilger, Forbes W. Blair and *Carter E. Keithley*, on behalf of William D. Hunt; and *Robert Nelson*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted January 18, 1974; Released January 22, 1974)

BY THE REVIEW BOARD: BERKEMEYER, PINCOCK AND KESSLER.

1. The Review Board has under consideration the Initial Decision of Administrative Law Judge Basil P. Cooper, FCC 73D–59, released November 20, 1973, recommending a grant of William D. Hunt's (Hunt) application for a new FM broadcast station on Channel 244A at Cayce, South Carolina; the Broadcast Bureau's exceptions and brief in support thereof, filed December 18, 1973; a reply, filed December 26, 1973, by Hunt; and the Broadcast Bureau's comments, filed December 28, 1973.

2. The Broadcast Bureau excepts mainly to the Administrative Law Judge's failure to condition a grant of Hunt's application upon the resignation of Agnes Hunt as bookkeeper of Station WXRY(FM), Columbia, South Carolina.[1] However, in light of Hunt's reply pleading, in which he attaches a copy of Mrs. Hunt's notification to WXRY that she had resigned her bookkeeping activities at that station, the Broadcast Bureau seeks to withdraw its exceptions. The Review Board has examined the merits of the Bureau's exceptions and concludes that Hunt's reply pleading has adequately resolved the question raised by the Broadcast Bureau's exceptions. The exceptions will, therefore, be dismissed and Hunt's application will be granted.

3. Accordingly, IT IS ORDERED, That the Broadcast Bureau's request to withdraw its exceptions, filed December 28, 1973, is granted; that the Broadcast Bureau's exceptions to the Initial Decision and brief in support thereof, filed December 18, 1973, ARE DISMISSED; and that the application of William D. Hunt is granted.

DONALD J. BERKEMEYER,
Member, Review Board,
Federal Communications Commission.

[1] By Memorandum Opinion and Order, FCC 73R–307, 42 FCC 2d 581, 28 RR 2d 353, released August 28, 1973, the Review Board added a cross-interest issue against Hunt.

F.C.C. 73D–59

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WILLIAM D. HUNT, CAYCE, S.C. For Construction Permit	Docket No. 19569 File No. BPH–7658

APPEARANCES

Donald E. Bilger, *Forbes W. Blair*, and *Carter E. Keithley* on behalf of William D. Hunt; and *Robert Nelson*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE BASIL P. COOPER

(Issued November 15, 1973; Released November 20, 1973)

PRELIMINARY STATEMENT

1. In this proceeding William D. Hunt (Hunt) seeks a permit to construct a new FM broadcast station to operate on Channel 244A (H and V), 300 feet, to serve Cayce, South Carolina, and the adjacent area.

2. By order adopted August 11, 1972, released August 15, 1972, the Commission, by the Chief of the Broadcast Bureau, acting under delegated authority, found that the above-identified application of William D. Hunt and the mutually exclusive application of Lexington County Broadcasters, Inc. (Lexington County), Docket No. 19568, File No. BPH–7605, were both qualified to construct and operate the proposed FM stations each seeking to serve Cayce, South Carolina, and designated both applications for hearing in a consolidated proceeding upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications for a construction permit should be granted.

3. The Review Board by Memorandum Opinion and Order adopted August 27, 1973, released August 28, 1973 (FCC 73R–307), enlarged the issues in this proceeding as follows:

> To determine whether Agnes C. Hunt's interests as bookkeeper in WXRY(FM) and in her husband's proposed station, as well as in WOIC as its comptroller-treasurer, provide a potential for the impairment of open, arms length competition among broadcast stations serving substantially the same area, contrary to the principles underlying the Commission's cross-interest policy, and, if so, the effect thereof on the basic and/or comparative qualifications of William D. Hunt to be a Commission licensee.

The Review Board also ordered that the burdens of proceeding with the introduction of evidence and proof under the issue added herein shall be on William D. Hunt.

4. Prehearing conferences were held on September 21 and Oct. 25, 1972, May 3 and Sept. 17, 1973. Hearings were held on Feb. 26, 27, June 27, 28 and Nov. 6, 1973. The record was closed on November 6, 1973.

FINDINGS OF FACT

5. At the time the Lexington County application was filed, said applicant through J. Olin Tice, Jr., its president and sole stockholder, had since 1958 owned and controlled station WCAY(AM), Cayce, South Carolina, 620 kHz, 500 watts, daytime only.

6. Lexington County proposed to mount its FM antenna on the side of the existing WCAY(AM) tower. So mounted, substantial portions of the service areas of both the AM and FM stations would have overlapped during daytime hours of operation.[1]

7. On August 13, 1973, Lexington County Broadcasters, Inc., by its attorney, petitioned the Administrative Law Judge for leave to dismiss the Lexington County application. Lexington County, however, did not file its affidavit of no consideration as is required by Section 1.525 of the Commission's rules.

8. On August 27, 1973, William D. Hunt filed his affidavit, executed August 25, 1973, wherein he (Hunt) states that, "He had neither promised nor paid any consideration directly or indirectly to Lexington County Broadcasters, Inc., nor to Mr. J. Olin Tice, Jr., President of Lexington County Broadcasters, Inc., for the request to dismiss its application for authority to construct a new FM station in Cayce, South Carolina, filed on August 13, 1973"; and that, "He has neither promised nor agreed to any merger of interest in connection with the withdrawal of that application."

9. On September 7, 1973, counsel for Lexington County filed with the Commission the original and copies of the affidavit of J. Olin Tice, Jr., executed August 29, 1973 at Cayce, County of Lexington, wherein "J. Olin Tice, Jr., being duly sworn, deposes and says that (1) he is President of Lexington County Broadcasters, Inc., and (2) Lexington County Broadcasters, Inc. neither has received nor has been promised any consideration directly or indirectly from William D. Hunt as an inducement for the dismissal of Lexington County Broadcasters, Inc.'s application in docket number 19568."

10. In response to the matters raised by the Review Board in adopting the new issue, Hunt, on September 20, 1973, filed a petition for leave to amend his application to reflect the fact that his wife, Mrs. Agnes C. Hunt, had resigned her position as comptroller-treasurer and director of WOIC, Inc., licensee of station WOIC, Columbia, South

[1] Lexington County was not confronted with any issue growing out of its proposal to radiate the signals of both the AM and the proposed FM stations from the same tower, but the proposals did put Lexington County at a competitive disadvantage, vis-a-vis Hunt, who presently owns no broadcast facility. See Commission's Policy Statement on Comparative Broadcast Hearings, Public Notice FCC 65-689; 1 FCC 2d 393; 5 RR 2d 1901 (July 28, 1965); and the Commission Memorandum Opinion and Order FCC 71-1205 in re petition filed by Best, CCC, and others for Rule Making to Clarify Standards in All Comparative Broadcast Proceedings, adopted December 1, 1971, released December 3, 1971, 32 FCC 2d 523; 23 RR 2d 1622.

Carolina, effective October 1, 1973, and that Mrs. Hunt had on September 17, 1973 agreed to terminate her bookkeeping activities for station WXRY(FM), Columbia, South Carolina, in the event her husband is granted a construction permit for a new FM station at Cayce, South Carolina. No objection was filed to granting the petition for leave to amend filed by Hunt on September 20, 1973. Bureau counsel, however, calls attention to the fact that by the terms of Hunt's September 20, 1973 petition for leave to amend, Mrs. Hunt's resignation as bookkeeper for station WXRY(FM) does not become effective until a grant of Hunt's captioned application.

11. Proposed findings of fact and conclusions of law were filed by William D. Hunt on August 13, 1973. On that date, August 13, 1973, Lexington County by its attorney petitioned the Presiding Judge to dismiss the Lexington County application (see paragraphs 7, 8 and 9, *supra*). Lexington County did not file proposed findings of fact and conclusions of law.

12. No objections have been filed to the petition of Lexington County that its application be dismissed. The petition of Lexington County to dismiss its application was granted and the application of Lexington County was dismissed with prejudice.

13. The application of William D. Hunt, however, remained in hearing status despite the dismissal of Lexington County because of the existence of the issue adopted by the Review Board by Memorandum Opinion and Order released August 23, 1973 (see paragraph 3 of the preliminary statement, *supra*).

14. On October 10, 1973, William D. Hunt filed a Motion for Summary Judgment pursuant to provisions of Section 1.251 of the Commission's rules which provides in part that:

> * * * if the pleadings, affidavits, material obtained by discovery or otherwise, additions, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

15. The Motion for Summary Judgment will be granted.

16. The application of Lexington County was dismissed at the request of that applicant. Had Lexington County remained in hearing status it would have been at a major competitive disadvantage, vis-a-vis, Hunt (see paragraph 6 and footnote 1, *supra*). With the withdrawal of Mrs. Agnes C. Hunt as bookkeeper, comptroller-treasurer and director of all broadcast facilities other than the single broadcast facility for which her husband is an applicant, there remains no genuine issue as to any material fact. Hunt is entitled to a summary decision.

CONCLUSIONS

1. By order adopted August 11, 1972, released August 15, 1972, the Commission, by the Chief of the Broadcast Bureau, acting under delegated authority found that the above-identified William D. Hunt and the then mutually exclusive applicant, Lexington County Broadcasters, were both qualified to construct and operate the proposed FM station seeking to serve Cayce, South Carolina, and designated both applications for hearing in a consolidated proceeding on the following two issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications for a construction permit should be granted.

2. On August 13, 1973, Lexington County requested the Presiding Judge to dismiss the Lexington County application. No objections were filed and the application of Lexington County Broadcasters, Inc., was dismissed with prejudice (see paragraph 11 and 12 of the basic findings).

3. The application of William D. Hunt remained in hearing status despite the dismissal of the Lexington County application because of the existence of the issue adopted by the Review Board by Memorandum Opinion and Order released August 23, 1973 (see paragraph 3 of the preliminary statement).

4. In response to the issue added by the Review Board, Hunt amended his application to reflect the fact that his wife, Mrs. Agnes C. Hunt, had resigned her position as comptroller-treasurer and director of WOIC, Inc., licensee of station WOIC, Columbia, South Carolina, effective as of October 1, 1973, and in the event the William D. Hunt application is granted, Mrs. Hunt will resign her position as bookkeeper of station WXRY(FM). The end result will be that Mrs. Hunt will restrict her bookkeeping or accounting activities to the company to be owned and operated by her husband. Hunt has met the requirements of this issue.

5. The issue adopted by the Review Board is resolved in favor of William D. Hunt.[2]

6. On October 10, 1973, William D. Hunt filed a motion for summary judgment pursuant to provisions of Section 1.251 of the Commission's rules which provide in part that the Presiding Judge may grant such motion:

> * * * If the pleadings, affidavits, material obtained by discovery or otherwise, additions, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

7. The pleadings, affidavits and evidence of record establish that Hunt's motion for summary judgment should be granted. In the first instance, the Lexington County application was dismissed at the request of that party. If, however, Lexington County had remained as an applicant, it was confronted with the fact that it was at a severe competitive disadvantage, vis-a-vis Hunt (see paragraph 6 of basic findings and footnote 1 to paragraph 6, *supra*). William D. Hunt, on the other hand, presently owns no broadcast facilities. There is no reason, legal or otherwise, why the application of William D. Hunt may not be granted.

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[2] The Presiding Judge notes that William D. Hunt has agreed that Mrs. Agnes C. Hunt will sever her connection as bookkeeper for station WXRY(FM) when the application of her husband William D. Hunt is granted. The Presiding Judge finds, however, that such agreement on the part of William D. Hunt and Agnes C. Hunt, his wife, is voluntary. The Presiding Judge does not find that a person performing professional services such as those performed by a bookkeeper, accountant, lawyer, or engineer may serve but one single broadcast facility at a time. See Bangor Broadcasting Corp., Docket No. 19165, et al., FCC 73D–52, issued September 27, 1973, released October 3, 1973.

ULTIMATE CONCLUSIONS

After due consideration of the entire record, and in particular those areas of comparison which are identified in paragraphs 6 through 9 of the findings of fact, the Presiding Judge finds that the public interest, convenience and necessity will be served by granting the application of William D. Hunt.

IT IS ORDERED that unless an appeal to the Commission is taken by any party, or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the rules, the application of William D. Hunt, Docket No. 19569, for a permit to construct a new FM broadcast station to operate on Channel 244A, 3 kw, 300 feet, to serve Cayce, South Carolina and the adjacent area, IS GRANTED.

BASIL P. COOPER,
Administrative Law Judge,
Federal Communications Commission.

F.C.C. 73–1328

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of INTERCAST, INC., SACRAMENTO, CALIF.	Docket No. 19516 File No. BPH–7669
EDWARD ROYCE STOLZ, II, TRADING AS ROYCE INTERNATIONAL BROADCASTING, SACRAMENTO, CALIF. For Construction Permits	Docket No. 19611 File No. BPH–7924

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released December 21, 1973)

BY THE COMMISSION:

1. This proceeding involves the mutually exclusive applications of Intercast, Inc. (Intercast) and Edward Royce Stolz, II tr/as Royce International Broadcasting (Stolz) for new FM broadcast stations at Sacramento, California. The applications were designated for hearing by our Order, FCC 72–916, 37 FR 23201, published October 31, 1972. Although the Administrative Law Judge had closed the record in this proceeding on June 14, 1973, the Review Board reopened the record and remanded the proceeding for further hearings after denying Stolz's Second Petition to Enlarge [1] (Memorandum Opinion and Order, FCC 73R–382, released November 14, 1973). On its own motion, the Board specified the following issue against Intercast:

> To determine whether Messrs. Kenneth Ponder, Jesse Session, and/or Robert Harvey, and/or Intercast, Inc., have made misrepresentations or abused Commission processes or been lacking in candor with respect to documents purporting to be affidavits submitted to the Commission on July 12, 1972 [1973,[2]] and if so, the effect of such conduct on the applicant's requisite and/or comparative qualifications to be a Commission licensee.

2. In denying the Second Petition filed on July 27, 1973, by Stolz seeking enlargement of issues to include inquiry into possible misrepresentations or lack of candor in the statements made in the documents filed July 12, 1973 by Intercast, the Review Board made clear that it did not deem inquiry into the content of the documents to be warranted. We do not agree. We believe that substantial questions have been raised as to whether, in the three affidavits submitted on July 12, 1973, one or more of Intercast's principals have attempted to mislead the Commission.

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[1] The Board had also denied a previous Petition to Enlarge by Stolz. (FCC 73R–316, released September 6, 1973.) See n. 3, *infra*.

[2] The Board's reference to 1972 is clearly a typographical error.

3. These affidavits were filed in support of an opposition to a June 19, 1973 Petition to Enlarge [3] filed by Stolz in which he sought the addition of legal qualifications and Section 1.65 issues [4] on the grounds that the State of California suspended Intercast's franchise on April 3, 1972, for failure to pay taxes and that Intercast for more than a year failed to notify the Commission of the suspension of its Articles of Incorporation. Intercast asserted in opposition that the taxes had been paid belatedly, that the franchise had been revived, and that any violation of Section 1.65 should be excused because the situation had been rectified and the principals were unaware of the suspension until after the first petition to enlarge was filed on June 19, 1973. To support the statement of lack of awareness of the suspension, affidavits of three principals were submitted. These three attached affidavits were to the effect: (a) that the three principals had relied upon an accountant to advise them when taxes were due and to prepare the documents for that purpose; that the accountant had become so ill that he could not properly perform his duties; (b) that the records of the Franchise Tax Board of California listed an old, noncurrent address of one of the principals (Robert L. Harvey) as the corporate address so that notification of delinquent tax and suspension did not reach any of the principals; and (c) that none of the principals was aware of the suspension before the first petition to enlarge was filed. The Board accepted the statements in the affidavits and denied the petition to add legal qualifications and Section 1.65 issues, even though there was pending before the Board a Second Petition to Enlarge Issues alleging misrepresentations and lack of candor in these affidavits and an admission by Interest that two of the affidavits bore traced signatures.

4. Stolz alleged, in the Second Petition to Enlarge Issues, that since, in 1971, the franchise was suspended for nonpayment of taxes and had to be revived, the principals could not have been ignorant of the suspension that would follow failure to pay such taxes in 1972; that Intercast gives neither the name of the accountant nor medical opinion to support the claim that he was too ill to perform his duties at the time the tax was due in 1972 and subsequently; that the statements regarding the corporate address listed with the Franchise Tax Board are not consistent with the Board's record; and that in the circumstances an issue should be added to permit inquiry on the record into the truth of the affidavits. The Broadcast Bureau in its comments expressed the view that inquiry is warranted if Intercast did not answer questions regarding the content of the affidavits in its reply pleadings. The Board in its November 14, 1973 order, *supra*, denied the petition on grounds that although Stolz had pointed out numerous gaps in

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[3] By its Memorandum Opinion and Order, FCC 73R–316, released September 6, 1973, the Review Board denied Stolz's petition to add legal and Section 1.65 issues against Intercast, and we do not here consider the correctness of the Board's action. This petition was, however, the occasion for the filing on July 12, 1973, of three affidavits, attached to Intercast's opposition to the petition to enlarge issues.

[4] In part, Section 1.65 of the Rules reads as follows: "Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate . . ."

Intercast's account of its suspension and reinstatement, he had offered no allegations raising a substantial question of wrongdoing, only theory and conjecture. The Board stated it had no reason to doubt Intercast's claim that the only affirmative fact Stolz had alleged, *i.e.* the error in Intercast's address, is based on a typographical error. The Board concluded that Stolz's arguments were inadequate to support the requested issues. As noted above, the Board, on its own motion, nevertheless reopened the record to inquire into the circumstances surrounding "the preparation and submission of the forged affidavits" but made clear that it was not providing for inquiry into the content of the affidavits.

5. We are of the opinion that neither Intercast's pleadings nor the supporting documents adequately explain substantial questions which are raised on the face of the affidavits, *e.g.*, (a) the significance of the address on file with the Franchise Tax Board cannot be determined without knowing the dates of Mr. Robert Harvey's residence at the various addresses and the practices of the Franchise Tax Board with regard to notifying corporations of tax delinquency and suspension; (b) the significance of the accountant's illness cannot be assessed without proper medical opinion as to his ability to perform duties during the relevant period; and (c) Stolz's allegations that we should not believe Intercast's claim that none of the principals had knowledge of the suspension cannot be dismissed in the circumstances without further substantiation. To a substantial degree, inquiry into the content of the documents would involve testimony of the same witnesses as will the issue already prescribed by the Review Board. Therefore, in the interest of administrative convenience, on our own motion we are adding an issue to include inquiry into possible misrepresentation or lack of candor in the content of the affidavits submitted on July 12, 1973.

6. Accordingly, IT IS ORDERED That the issues in this proceeding ARE ENLARGED to include the following issue:

> To determine whether Intercast, Inc. or any of its principals, namely Dr. Kenneth Ponder, Mr. Jesse Session or Mr. Robert Harvey, has been lacking in candor or misrepresented facts to the Commission in documents submitted to the Commission in this proceeding on July 12, 1973; whether in light of the facts adduced under this issue, Intercast, Inc. possesses the necessary qualifications to be a licensee of the Commission; and if Intercast is qualified, the effect of the facts adduced upon Intercast, Inc.'s comparative qualifications.

7. IT IS FURTHER ORDERED That the burden of proceeding initially with the presentation of evidence is placed upon Edward Royce Stolz II, tr/as Royce International Broadcasting, who initially raised these matters, and the burden of proof is placed upon Intercast, Inc. with respect to this issue.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 74–52

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
KENTUCKY STATE BOARD OF EDUCATION
Concerning Application for Construction
Permit for VHF Television Broadcast
Translator Station

JANUARY 16, 1974.

KENTUCKY STATE BOARD OF EDUCATION,
600 Cooper Drive,
Lexington, Ky. 40502

GENTLEMEN: This refers to your applications for construction permits for new one-watt VHF television broadcast translator stations to serve Augusta, Kentucky, by rebroadcasting station WKMR(TV), channel 38, Morehead, Kentucky, on output channel 4 (BPTTV–4734), to serve Jackson, Elkatawa, and Wolverine, Kentucky, by rebroadcasting station WKHA(TV), channel 35, Hazard, Kentucky, on output channel 7 (BPTTV–4735), and to serve Grayson, Kentucky, by rebroadcasting station WKMR(TV), channel 38, Morehead, Kentucky, on output channel 10 (BPTTV–4755).

As you are aware, long-standing Commission policy prohibits authorization of VHF translator stations to the licensee of a UHF television station, it being the Commission's purpose to encourage UHF television station licensees to promote UHF television broadcasting by making available to the public UHF television signals wherever possible. *William L. Fox*, FCC 65–36, 4 RR 2d 224; *WISE–TV, Incorporated*, 32 FCC 2d 635, 23 RR 2d 321. Your applications are inconsistent with this policy and you have presented no persuasive reasons which would warrant a departure from that policy. In addition, each of the proposed translators would serve a community or area within the predicated Grade B or higher contour of one or more UHF television stations and no showing has been made that the communities or areas to be served do not receive satisfactory service from any of these UHF television stations. Consequently, your applications are inconsistent with the provisions of section 74.732(d) of the Commission's rules.

By letter dated December 19, 1973, you have requested that action on your applications be deferred pending the Commission's decision on a petition for rule making (RM–2146) filed in February 1973 by The Spartan Radiocasting Company. Since the petition to which you refer pertains only to power limitations on VHF translator stations serving communities or areas east of the Mississippi River and power is not one of the factors militating against grant of your applications, disposition of the rule-making petition would not appear to affect the prob-

lems which preclude grant of your applications. Consequently, no useful purpose would be served by delay of action on your applications on this account.

For the reasons set forth above, your applications ARE DISMISSED, pursuant to section 1.566(a) of the Commission's rules, as patently not in accordance with the rules. This dismissal is without prejudice to the immediate refiling of susbtantially the same applications specifying operations on UHF channels.

Chairman Burch was absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 74–54

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF KMAP, INC., LICENSEE OF RADIO STATION KWAC, BAKERSFIELD, CALIF.
For a Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted January 16, 1974; Released January 21, 1974)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. Now under consideration are: (a) our decision in *KMAP, Inc.*, 43 FCC 2d 258, 28 RR 2d 699 (1973), in which we ordered KMAP, Inc. (KWAC), licensee of Station KWAC, Bakersfield, California, to forfeit $2,500; and (b) KWAC's application for mitigation or remission of the forfeiture, filed November 1, 1973.

2. KWAC does not dispute the facts of this case. Rather, the dispute is the application of the law to those facts, and the amount of the forfeiture.

3. KWAC broadcast a total of 13 announcements for a pre-Father's Day dance on June 16 and 17, 1972. The announcements included the statement: ". . . some one at the dance, some lucky person will win $50. Remember, the admission is only $1.75 . . ." These announcements contain all the elements of a lottery—consideration, chance and a prize—and were in violation of the lottery statute, 18 U.S.C. 1304.[1] As to this violation, KWAC notes that the announcements were broadcast on only two days and that the maximum penalty under Section 503(b) of the Communications Act is $1,000 per day. KWAC characterizes the announcements as containing only incidental mention of a door prize and urges that if a "precedent" is to be established by issuing forfeitures for such violations, a warning to the industry would be more appropriate.

4. KWAC was also cited for lottery violations by broadcasting 50 announcements promoting a "JBA" (Junior Baseball Association) annual barbecue during the period from May 23 through June 4, 1972. The announcements stated that a drawing would be held at the barbecue for a color television set and specifically stated, "Donation, $2—

[1] 18 U.S.C. 1304 provides:
Whoever broadcasts by means of any radio station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprize, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of prizes drawn or awarded by means of any such lottery, gift enterprize or scheme, whether said list contains any part of or all of such prizes, shall be fined not more than $1,000 or imprisoned not more than one year or both.
Each day's broadcasting shall constitute a separate offense.

adults: $1.25—juniors." [2] We believe it is clear from that quotation that persons attending the barbecue were expected to pay the specific amounts stated, and that such payments constitute consideration. The characterization of an admission fee as a "donation" does not change that conclusion. Accordingly, all elements of a lottery were present in the "JBA" drawing, and we concluded in our prior decision in this proceeding that KWAC's broadcast of information concerning that lottery violated 18 U.S.C. 1304.

5. Nonetheless, KWAC contends as to the "JBA" announcements that the proceeds of the event were to help a worthy cause sanctioned by the Charity Board of Appeals at Bakersfield; that the station received no consideration for broadcasting the announcements; that the prize was donated; that the mention of the color television set as a prize was only incidental; and that other Bakersfield stations ran similar announcements but were not notified of apparent liability for a forfeiture. KWAC has also submitted several newspaper clippings that contain information concerning lotteries. KWAC reasserts its argument that 18 U.S.C. 1302, which is the lottery statute applicable to the mailing of newspapers, and 18 U.S.C. 1304, which is applicable to broadcast licensees, are similar statutes and should be similarly interpreted, citing *FCC* v. *American Broadcasting Co.*, 347 U.S. 284, 74 S. Ct. 593 (1954). The imposition of a fine on KWAC while permitting other broadcast stations and newspapers to go unpunished raises serious First Amendment and Equal Protection [3] problems, according to KWAC. Finally, KWAC asserts that as a Class IV station, it should not be singled out to test the imposition of such a fine.

6. The lottery statute creates no exemption for sanctioned or worthy lotteries. Legal state lotteries, for example, are sanctioned by state law and are presumably considered worthy in the states that have them. Yet the broadcast of information that directly promotes those lotteries, even where broadcast without consideration, violates the statute. *New York State Broadcasters Association* v. *FCC*, 414 F. 2d 990 (2d Cir. 1968). There is no exemption in the statute that would exclude lotteries where the prize is donated, nor is there a statutory exception to lottery information that gives only incidental mention to the prize. In any event, we disagree with KWAC's position that the mention of the prize was only incidental. Each of the 50 announcements included the statement, "Grand prize drawing for a color Motorola portable TV." See footnote two, above. Finally, the imposition of forfeitures for violation of 18 U.S.C. 1304 is relatively common. Thus, we reject KWAC's contention that it is being singled out for the imposition of a forfeiture for its broadcast of information concerning two separate lotteries.

7. We had no information as to the broadcast of the "JBA" announcements on other stations in the area until the allegation was made in a pleading dated June 14, 1973, more than a year after the "JBA"

[2] The full text of the announcement is:
Hurry! Hurry! Hurry! To the JBA's 9th annual barbeque (sic) Sunday, June 4, 12 noon to 5 p.m. at Hart Memorial Park, Section 7. Grand Prize drawing for a color Motorola portable TV. Entertain by L. D. Moshier and the Kern River Blue Grass Boys. Donation $2.00—adults; $1.25—juniors. That's the JBA's 9th annual barbeque (sic), Sunday, June 4, 12 noon to 5 p.m. at Hart Park. You all Come!

[3] Since the Equal Protection clause appears in the Fourteenth Amendment, which is applicable to the states, we assume that KWAC wishes to raise questions under the Due Process clause of the Fifth Amendment, which is applicable to the Federal Government.

announcements would have been broadcast on the other stations. Thus, assuming that other stations in the Bakersfield area did broadcast the same lottery information, the one-year statute of limitations has run and no forfeiture sanctions may be imposed against those stations. We have made further inquiry into the matter, however, so that we can impose whatever sanction might be appropriate, other than a forfeiture, as to those stations. Of course, our inability to find *all* violations of statutes and rules, or our failure to find them before the expiration of the statute of limitations pertaining to forfeiture sanctions, does not make constitutionally invalid the imposition of sanctions for violations we do find, *U.S.* v. *Gebhart*, 441 F. 2d 1261 (6th Cir. 1971), *U.S.* v. *Sacco*, 428 F. 2d 624 (9th Cir. 1970). See too, *Oyler* v. *Boles*, 368 U.S. 448, 82 S. Ct. 501 (1962).

8. We have no quarrel with KWAC's position that the two lottery statutes, 18 U.S.C. 1302 and 1304, should be similarly interpreted, to the extent that they have similar provisions. However, as we noted in our prior decision in this proceeding, KWAC has not cited any cases indicating that we are applying standards as to what constitutes a lottery that differ from standards used for postal violations under Section 1302.[4] In response to this contention KWAC has submitted copies of newspaper articles describing lotteries, asserts that these have gone unpunished under Section 1302, and that the disparate treatment of newspapers and its announcements raises First and Fifth [5] Amendment problems. By summitting these newspaper articles, some of which appear to contain lottery information, KWAC is raising a question as to the enforcement of the two statutes, not differing interpretations of them.[6] We believe we have an obligation to enforce Section 1304, *American Broadcasting Company*, v. *FCC*, above, and we can only speculate as to why the Justice Department may not have prosecuted violations of Section 1302, assuming the validity of KWAC's contention that no prosecutions have resulted under that statute as to lotteries similar to the "JBA" lottery. In any event, differences in enforcement do not violate the Fifth Amendment unless "based upon some invidious or inherently suspect classification such as ones based upon race, religion, wealth or political beliefs," *U.S.* v. *Gebhart*, above, at 1265. Since our action was not based on an "invidious or inherenty suspect classification," and KWAC has not alleged

[4] As to what constitutes a lottery, we are not aware of any Postal Service rulings that are inconsistent with our own holdings. In *FCC* v. *American Broadcasting Company*, above, the Supreme Court cited rulings of the Solicitor of the Post Office Department interpreting Section 1302, which we believe are fully consistent with our own rulings. See footnote 15 of that case, 347 U.S. at 294.

[5] See footnote 3, above.

[6] The text of Section 1304 is set out in footnote 1, above. The pertinent portions of Section 1302 state:

> Whoever knowingly deposits in the mail, or sends or delivers by mail:
>
> * * * * * * *
>
> Any newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of prizes drawn or awarded by means of any such lottery, gift enterprize or scheme, whether said list contains any part or all of such prizes; (shall be subject to fine or imprisonment) . . .

Although Section 1302 is limited to advertisements, and Section 1304 refers to advertisements *and* information concerning a lottery, the Postal Services' definition of "advertisement" appears to encompass everything that would be included under the "information concerning" phrase in Section 1304.

that it was, we reject KWAC's constitutional objections based on differences in the enforcement of the statutes.

9. Other than the enforcement question, KWAC has not specified its constitutional objections to our action. We note that the courts have specifically rejected arguments that Section 1304 violates the First and Fifth Amendments to the Constitution, *American Broadcasting Company* v. *FCC*, 110 F. Supp. 374 (S.D. N.Y. 1953), affirmed, *FCC* v. *American Broadcasting Company*, above, and *New York State Broadcasters Association* v. *FCC*, above. Accordingly, we find no basis for questioning the constitutionality of Section 1304 or our actions taken in this proceeding for violation of its provisions. In view of the above, we conclude that KWAC violated 18 U.S.C. 1304 by broadcasting lottery information for two lotteries on sixteen days, as detailed in the Notice of Apparent Liability.

10. KWAC announcers received money from listeners who requested programs dedicated to friends or relatives. These paid dedications were made over a long period of time, but specific examples within the statute of limitations were cited in the Notice of Apparent Liability. Moreover, KWAC made available to our investigators letters between its President and its counsel. Counsel properly advised that payments to the station for dedications constitute consideration under Section 317 of the Communications Act, and appropriate announcements and entries in the logs were required. Counsel also stated, "When payment goes to the 'D.J.', thus reducing what you pay him in salary or as a bonus, an appropriate announcement should be made under Section 317(c) and the matter logged." KWAC's response to that letter offered various excuses, but ultimately stated to counsel, "We therefore, don't announce per your letter or log per your letter," a statement confirmed by our investigation. We found KWAC to have violated Section 317(a) of the Act and Section 73.119(a) of our Rules. Moreover, in view of the correspondence quoted above, KWAC was aware that the announcers were receiving money, that announcements should have been made, and that appropriate entries should have been entered in the logs. We therefore found violations of Section 317(b) of the Act and Sections 73.119(c) and 73.112(a)(2) of our Rules.

11. In its petition, KWAC emphasizes the efforts it made to try to stop listeners from sending dedications to its announcers. However, KWAC knew what was required by our Rules and the Act, but elected to ignore them and substituted its own practices. While KWAC's efforts did result in a reduction in the number of paid program dedications, it did not succeed in bringing the station's operation into compliance with those requirements. The examples cited in the Notice of Apparent Liability occurred almost four years after counsel advised the station of the actions it was required to make.

12. KWAC also contends that the money for the dedications never went to the station, but was always received by the announcers. Receipt of consideration by the station, directly or indirectly, is a necessary element to trigger the requirements of Section 317(a) of the Act and our corresponding rule. In general, we believe a practice of a licensee permitting its announcers to keep money sent by listeners constitutes payment to the announcers in lieu of additional salary,

wages or bonuses, and constitutes indirect consideration to the station within the meaning of Section 317(a). However, on further reflection, the only indication we have that this was the case here is counsel's general characterization, quoted above in paragraph nine. We have no evidence on the subject from KWAC or its employees. While we believe that such a long standing practice as was involved here implies that retention of the money by the announcers was in lieu of other income, we do not believe that it is appropriate, in view of the summary nature of forfeiture proceedings, to base a monetary forfeiture on such an implication. Accordingly, the forfeiture will be reduced.

13. Section 508(a) of the Act states in part:

> . . . any employee of a radio station who accepts . . . any money . . . for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance . . . to such station.

Section 317(b) of the Act states:

> In any case where a report has been made to a radio station, as required by Section 508 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such station, an appropriate announcement shall be made by such radio station.

The language of Section 73.119(c) of our Rules follows Section 317(b) closely. Under the terms of the rule and the statutes, the announcements specified by Section 317(b) of the Act and Section 73.119(c) of our Rules must be made even though the station receives no consideration. Because KWAC was aware that its announcers were receiving payments for the dedication of programs, its failure to announce that payment had been received violates Section 317(b) and Section 73.119(c) of our Rules.

14. KWAC contends generally that the amount of the forfeiture is excessive. However, in determining the amount of the forfeiture, we consider several factors, including the number of statutory and rule violations, the duration of the violations, the seriousness of the violations and the financial position of the licensee.[7] Considering all the circumstances presented here, we believe that the amount of the KWAC forfeiture is appropriate. However, in view of our determination that the forfeiture should not be assessed for violation of Section 317(a) of the Act and Section 73.119(a) of our Rules, the amount of the forfeiture will be reduced to $2,000.

15. Accordingly, IT IS ORDERED, That the application for remission or mitigation of the forfeiture IS GRANTED to the extent of reducing the forfeiture to $2,000, and IS DENIED in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[7] We have never used the power or class of the station involved as a factor in setting the amount of forfeitures. We rely instead on the financial position of the licensee.

104-023—74——6

F.C.C. 74-46

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of MARINE TELEPHONE CO., INC.	Docket No. 19923 File No. 82-M-L-93
SHIP TO SHORE TELEPHONE CO. For a Public Coast III-B Station To Serve the Elizabeth City, North Carolina, Area.	Docket No. 19924 File No. 11-M-L-103

MEMORANDUM OPINION AND ORDER

(Adopted January 16, 1974; Released January 22, 1974)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. The above-captioned applications seek a license for a new Class III-B Public Coast station to be located in the vicinity of Elizabeth City, North Carolina. This class of station provides a ship-shore radiotelephone common carrier service, primarily of a local character, on VHF channels. Both Marine Telephone Company, Inc. (hereinafter called Marine) and Ship to Shore Telephone Company (hereinafter called Ship to Shore) have applied for the frequencies 156.8 MHz and 161.8 MHz.

2. The Commission's rules do not authorize the establishment of two new VHF stations of this class to serve the same geographical area. It is evident from an analysis of the applications that substantial overlap in service area would exist if both applications were granted. Therefore, the applications are mutually exclusive, and a hearing is needed to determine which of the applications should be granted.

3. Except for the issues otherwise specified herein, the applicants are qualified to become licensees of the Commission. The Safety and Special Radio Services Bureau and the Common Carrier Bureau of the Federal Communications Commission are parties to this proceeding.

4. Accordingly, IT IS ORDERED, That the above-entitled applications of Marine and Ship to Shore, ARE DESIGNATED for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order on the following issues:

(a) To determine comparatively which applicant will provide the public with the better public coast station service based on the following considerations:

(1) coverage area and its relation to the greatest number of potential users;

(2) hours of operation;

(3) qualifications of management, operators and other personnel;
(4) interconnection with landline facilities;
(5) proposed rates and charges;
(6) reliability and efficiency of service; and
(7) ability to provide a radio communication service to vessels in distress.

(b) To determine in light of the evidence adduced on all the foregoing issues, which application should be granted.

5. IT IS FURTHER ORDERED, That the burden of proof and the burden of proceeding with the introduction of evidence on Issue (a) is placed on each applicant insofar as the respective items pertain to each of these parties. Issue (b) is conclusory.

6. IT IS FURTHER ORDERED, That coverage areas will be computed on the basis of the technical specifications contained in Subpart R of Part 81 of the Commission's rules.

7. IT IS FURTHER ORDERED, That to avail themselves of an opportunity to be heard, Marine and Ship to Shore, pursuant to Section 1.221(c) of the rules, in person or by attorney, shall within twenty days of the mailing of this Order, file with the Commission in triplicate a written appearance stating their intention to appear on the date set for hearing and present evidence on the issues specified in this Order.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
MARYLAND STATE LOTTERY AGENCY
Concerning Request to Televise the First
Drawing Under the Revised Maryland
State Lottery

JANUARY 17, 1974.

MR. STANLEY S. FINE,
Chief Deputy Director, Maryland State Lottery Agency,
Suite 350, The Rotunda, 711 West 40th St.,
Baltimore, Md. 21211

DEAR MR. FINE: This is in reply to your letter of December 26, 1973, concerning the new Maryland State Lottery.

You state that in late January or early February, 1974, the Maryland State Lottery will introduce a new game and prize structure. Specifically, you indicate that there will be: a seven-fold increase in the number of winners per week; new winning number combinations; quicker means of determining eligibility for the "Millionaire" drawing; instant payoff on small prizes; and a subscription ticket plan. You further state that you intend to have high State officials at the first drawing under the revised scheme and that you believe that this first drawing will be a very significant event in Maryland's history. You seek advice as to televising the drawing.

In view of your representations, it appears that a broadcast licensee might reasonably conclude in good faith that the first drawing under the revised scheme would be of such news value that its broadcast would not be prohibited, even though an indirect result of the broadcast might be to promote the lottery. However, continued broadcasts of this kind during subsequent weeks would raise questions of compliance with the statute under the guidelines set out in *New York State Broadcasters Association* v. *FCC*, 414 F. 2d 990 (2d Cir. 1969) and the Commission's ruling in *Broadcasting of Information Concerning Lotteries*, 21 FCC 2d 846 (1970). The Commission's General Counsel concurs in this interpretation.

I trust that the above satisfactorily responds to your letter.

Sincerely yours,

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

F.C.C. 73-1292

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to MID-SOUTH BROADCASTERS CORP., ASSIGNOR For Consent to Assignment of Station WVSL-FM, Slidell, La., to Security Broadcasting, Inc.	File No. BALH-1883

DECEMBER 10, 1973.

MR. T. V. GARRAWAY
MID-SOUTH BROADCASTERS CORP.,
P.O. Box GG,
Prentiss, Miss. 39474

DEAR MR. GARRAWAY: This refers to your application for consent to the assignment of license of Station WVSL-FM, Slidell, Louisiana (BALH-1883) from Mid-South Broadcasters Corporation to Security Broadcasting Inc. and to a complaint, signed by some 33 persons residing in the New Orleans area, concerning a recent change in the station's musical format and a promotional contest which was aired by the station.

The matter of the change in musical format is discussed in our letter of the same date to the complainants, a copy of which is attached, hereto. Thus, this letter concerns itself solely with the matter of the promotional contest.

With respect to the promotional contest, complainants state as follows:

> . . . WVSL also sponsored a drawing in which anyone sending in a vote for more progressive jazz and rock music, which they call 'Mother Radio' would win a chance for a windjammer cruise to the Bahamas plus ten speed bicycles and other prizes. Due to the recent sale of the station we feel this will not come about. . . .

In your letter dated November 30, 1973 with respect to this contest you state as follows:

> With regard to the contest mentioned in this letter, the contest offering a chance on a Windjammer Cruise and bicycles was broadcast by the station. It was not authorized by the licensee and the acting manager and others on the staff of the station who instituted the contest had their employment terminated.
>
> To the best of the knowledge of the licensee, the contest consisted of signing ballots in various record stores to vote for the popularity of radio station WVSL-FM. From among the individuals who so voted, names were to be drawn and 2 Windjammer Cruises for 2 people were to be given away as well as a man's and a woman's ten speed bicycle.
>
> When the licensee terminated the services of the employees who instituted this contest, they destroyed whatever names were at the station, making it impossible for the licensee to draw any names.
>
> The licensee represents to the Commission that if the Commission. so requires, it will rebroadcast the contest and award the 2 Windjammer Cruises for 2 people and a man and woman's ten speed bicycle.

Further, Eugene T. Smith, Esq., as attorney for the assignee herein, represents to the Commission that if required by the Commission it will also rebroadcast the contest and award the 2 Windjammer Cruises for 2 people and a man and a woman's ten speed bike."

In view of your statement that the employees who instituted the contest destroyed the material at the station which contained the names of the contestants, it would appear to be impossible to hold the drawing for the benefit of the original entries. Since the contest was for the promotion of a "progressive jazz and rock" musical format and required responses showing a preference for that musical format, and since WVSL–FM discontinued that format in June 1973 when it began simulcasting the programming of its companion station WSDL–AM, the rebroadcast of this same contest at this time would be a futile act. Furthermore, since assignee proposes to carry a "Black oriented" format, a requirement that it rebroadcast the contest would appear to be inappropriate.

The Commission wishes to point out that the licensee is responsible for all matters which are aired over its facilities. When contests are advertised it is the responsibility of the licensee to protect the public from false, misleading or deceptive advertising as set forth in our Public Notice of November 7, 1961 entitled "*Licensee Responsibility with Respect to Broadcast of False, Misleading or Deceptive Advertising.*" (FCC 61–1316).

However, in view of all of the circumstances, and the fact that Station WVSL–FM is being sold due to the licensee's dire financial condition and the failing health of its principal stockholder, the matter of the contest does not raise a substantial question which would bar a grant of your assignment application.

Accordingly, upon determining that the applicants are fully qualified and that the public interest would be served thereby, the Commission has this day granted the application for assignment of license of Station WVSL–FM to Security Broadcasting Inc.

Commissioner H. Rex Lee concurred in the result.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1293

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
DONALD HARRIS, ET AL.
Concerning Change of Format on Station
WVSL-FM, Slidell, La.

DECEMBER 10, 1973.

MR. DONALD HARRIS, *et al*,
2509 Gaffrias No. 701,
Metairie, La. 70001

DEAR MR. HARRIS: This refers to the complaint, received by the Commission on June 27, 1973, signed by you and 32 other individuals, which protests the change of musical format on Station WVSL-FM, Slidell, Louisiana, from "progressive jazz and rock" to a "top 40 rock and roll format." You state that "there are now *no* free form progressive jazz and rock stations broadcasting in the New Orleans area (emphasis yours) and you "demand that this type of music be broadcast in the New Orleans area again." Also, you state that WVSL "sponsored a drawing in which anyone sending a vote for progressive jazz and rock music would win a chance for a windjammer cruise to the Bahamas plus ten speed bicycles and other prizes", and that "(d)ue to the recent sale of the station . . . this will not come about."

The Commission has before it an application (BALH-1883), filed on August 15, 1973, for consent to the assignment of license of Station WVSL-FM from Mid-South Broadcasters Corp. to Security Broadcasting of New Orleans, Inc. Security Broadcasting proposes to operate WVSL-FM with a "Black oriented" format. Mid-South also has an application (BAL-7956) for the assignment of its AM station, WSDL to Inter-American Broadcasters, Inc. Your complaint has been considered in connection with the processing of the WVSL-FM application and comments upon your allegations have been obtained from Mr. T. V. Garraway, the licensee's president and principal stockholder. The facts and circumstances concerning the format change, as disclosed in the pending application and the comments of Mr. Garraway, indicate that the change was necessitated by the severe financial losses incurred in the operation of WVSL-FM and WSDL-AM. Accordingly, after notifying the Commission in writing of its decision and the reason therefore, the licensee in June, 1973 discontinued the progressive rock format on WVSL-FM and began simulcasting the "middle-of-the-road" format of its companion AM station WSDL.

With regard to the availability of progressive rock music over broadcast stations in the New Orleans area, Mr. Garraway points out that, as of the date of your complaint letter, Station WRNO-FM, New Orleans, was broadcasting a progressive rock format and that on or about September 27, 1973, Station WNOE-FM, New Orleans,

began broadcasting a progressive rock format from 3 p.m. to 3 a.m. By telephone on November 28, 1973, Mr. Eric Anderson, sales manager of WNOE informed the Commission's staff that WNOE had that day extended the progressive rock format to 21 hours per day. In addition to these two stations, the Commission has learned that Station WTUL–FM, New Orleans, licensed to Tulane University Broadcasting System, also broadcasts substantial amounts of progressive rock music.

Your allegations regarding the contest for the windjammer cruise and other prizes and the licensee's comments on this matter are discussed in the Commission's letter of this same date to Mr. Garraway, a copy of which is attached hereto.

In view of the substantial losses sustained in the operation of Station WVSL–FM and in light of the other stations in the New Orleans area providing a progressive rock format, the Commission believes that your complaint raises no substantial or material questions with respect to the operation of Station WVSL–FM by Mid-South Broadcasters Corp. Therefore, the Commission, upon determining that the applicants are fully qualified and that the public interest would be served thereby, has this day granted the WVSL–FM assignment application.

Your interest in this matter has been appreciated.

Commissioner H. Rex Lee concurred in the result.

By Direction of the Commission,
Vincent J. Mullins, *Secretary*.

F.C.C. 74–33

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of PACIFIC AND SOUTHERN BROADCASTING CO., INC., ASSIGNOR AND COMBINED COMMUNICATIONS CORP., ASSIGNEE For Transfer of Control of WQXI–TV, Atlanta, Ga.; WWDJ, Hackensack, N.J.; WSAI and WJDJ–FM, Cincinnati, Ohio; and KKDJ–FM, Los Angeles, Calif.	File No. BTC–7163

JANUARY 9, 1974.

PACIFIC AND SOUTHERN BROADCASTING CO., INC.,
1611 West Peachtree Road, N.E.,
Atlanta, Ga. 30309
COMBINED COMMUNICATIONS CORP.,
411 North Central Avenue,
Phoenix, Ariz. 85002

GENTLEMEN: This is with reference to the application for transfer of control of Pacific and Southern Company, Inc., licensee of WQXI–TV, Atlanta, Georgia, WWDJ, Hackensack, New Jersey, WSAI and WJDJ(FM), Cincinnati, Ohio, and KKDJ(FM), Los Angeles, California, from Pacific and Southern Broadcasting Company, Inc. to Combined Communications Corporation (File No. BTC–7163), which the Commission granted on January 9, 1974.

The consideration for the above transfer is undetermined at the present time because the agreement between the parties calls for an exchange of stock in Pacific and Southern Broadcasting Company, Inc. by its present stockholders for newly-issued stock in Combined Communications Corporation, the exact number and value of which cannot be determined until the closing.

The Commission is of the view that the consideration for purposes of determining the grant fee can be determined by multiplying the number of shares of Combined Communications Corporation which are issued or reserved for issuance in connection with the merger of these corporations by the "Average Closing Price" of the stock, as that term is defined in the agreement between the parties.

In view of the above, you are requested to notify the Commission, immediately after consummation of the agreement, of the number of shares of Combined Communications Corporation so issued or reserved, and the Average Closing Price of the stock and to remit the appropriate grant fee, namely 2% of the consideration.

Commissioner Hooks was absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 74-32

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of PACIFIC AND SOUTHERN CO., INC., ASSIGNOR AND JEFFERSON-PILOT BROADCASTING CO., ASSIGNEE For Assignment of Licenses of KIMN, Denver, Colo.; WQXI, Atlanta, Ga.; and WQXI-FM, Smyrna, Ga.	File Nos. BAL-7981, BALH-1896

JANUARY 9, 1974.

PACIFIC AND SOUTHERN CO.
1611 West Peachtree Road, N.E.,
Atlanta, Ga. 30309
JEFFERSON-PILOT BROADCASTING CO.
1 Julian Price Place,
Charlotte, N.C. 20209

GENTLEMEN: This is with reference to the applications for assignment of the licenses of KIMN, Denver, Colorado, WQXI, Atlanta and WQXI-FM, Smyrna, Georgia, from Pacific and Southern Company, Inc. to Jefferson-Pilot Broadcasting Company (File Nos. BAL-7981 and BALH-1896), which the Commission granted on January 9, 1974.

In considering the assignment of the licenses of WQXI-AM-FM, the Commission noted that there is currently pending a civil antitrust complaint against the parent of the assignee, Jefferson-Pilot Corporation, and others. In accordance with the Commission's Public Notice of October 5, 1973, the grant was made subject to the outcome of the antitrust suit.

The Commission also noted that there are presently pending before the Atlanta Office of the Equal Employment Opportunity Commission (EEOC), three complaints against WQXI-AM-FM. The EEOC has issued a "Determination" and invited the parties to enter into the conciliation process. Pacific and Southern Company, Inc. has represented that it intends to join in the conciliation process in a spirit of good faith. Jefferson-Pilot Broadcasting Company has represented that, although the EEOC will still be able to look to Pacific and Southern Company for whatever relief it may deem appropriate in this matter, nevertheless it will abide in the final order of the EEOC.

In view of the above, the grant of the assignment of Stations WQXI-AM-FM, was also made subject to the outcome of the EEOC matter.

Commissioner Hooks absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 74–77

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Public Notice
CONCERNING THE APPLICABILITY OF COMMISSION POLICIES ON PROGRAM-LENGTH COMMERCIALS

JANUARY 29, 1974.

APPLICABILITY OF COMMISSION POLICIES ON PROGRAM-LENGTH COMMERCIALS

The Commission has received a number of pleadings, filed on behalf of various licensees of radio and television stations, which in essence petition the Commission to revise or to clarify its policies pertaining to program-length commercials.[1]

The above-referenced filings appear to have been generated by the Commission's statements in its Public Notice, *Program-Length Commercials*, issued February 22, 1973.[2] In that Public Notice, the Commission noted its serious concern over broadcasts of program-length commercials and referred to several rulings concerning programs that interweave "non-commercial" program content so closely with the commercial message that the entire program must be considered commercial. The Commission further noted the three basic problems that typically attend the broadcast of program-length commercials: (1) broadcast of such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability; (2) the program-length commercial is typically inconsistent with the licensee's representations to the Commission regarding the maximum amount of commercial matter it will broadcast in any hour;

[1] These pleadings consisted of filings by the National Association of Broadcasters, June 1, 1973; the Elkins Educational Research Foundation, April 24, 1973; and the law firms of Cohn and Marks, March 16, 1973, and Haley, Bader and Potts, March 25, 1973. On August 13, 1973, the National Citizens Committee for Broadcasting (NCCB) filed a memorandum opposing revision of the Commission's program-length commercial policies, to which Haley filed a statement which essentially repeated what it had urged in its original petition. All parties agree that the Commission's policies should be clarified. To the extent that the material in this Public Notice provides the requested clarification, these petitions are granted, and in all other respects are denied.

[2] 39 FCC 2d 1062, 26 RR 2d 1023. Issued concurrently with the Public Notice was a letter admonishing *Taft Broadcasting Company*, licensee of Stations WDAF–AM and WDAF–TV, for broadcasting program length commercials. *Taft Broadcasting Co.*, 39 FCC 2d 1070 (1973). Since then, the Commission has had occasion to issue similar admonishments to several licensees for their broadcasts of "chinchilla" programs, which the Commission found were program-length commercials. *Weigel Broadcasting Co.*, 41 FCC 2d 370 (1973); *Rush Broadcasting Corp.*, 42 FCC 2d 483, 486 (August 2, 1973); *United Television Company of New Hampshire*, 42 FCC 2d 632, 636 (1973); *Turner Broadcasting of North Carolina*, 42 FCC 2d 622, 626 (1973); *Midland Television Corporation*, 42 FCC 2d 587, 591 (1973); *WXON–TV, Inc.*, 42 FCC 2d 639, 642 (1973); *Mid New York Broadcasting Corp.*, 42 FCC 2d 594, 597 (1973); *Channel Seventeen, Inc.*, 42 FCC 2d 829 (1973). These admonishments, with the exception of *Channel Seventeen, Inc.*, were sent to those licensees together with Notices of Apparent Liability for their apparent failure to comply with the Commission's Rules pertaining to proper logging of commercial announcements. See Commission's Rules, Section 73.670(a)(2)(ii).

and (3) violations of the Commission's logging Rules are usually evident.[3]

Questions have been raised by petitioners concerning the meaning of the Commission's statement that certain programs may exhibit a pattern of subordinating the public interest in programming to an interest in the salability of the sponsor's products or services. Additionally, petitioner National Citizens Committee for Broadcasting (NCCB) states that the primary test in determining that a program falls within the definition of a program-length commercial is whether commercial interests are the program's "dominant purpose" which, it says, is another way of stating that the licensee has subordinated programming in the interest of the public to programming in the interest of salability.[4] The Commission does not mean by this expression to question a licensee's judgment in selecting programming which it believes will attract an audience, even though its motive in so doing may, at least in part, be to sell advertising within such programs and thereby derive the revenue necessary to the operation of its station. The fact that an interested commercial entity sponsors a program the content of which is related to the sponsor's products or services does not, in and of itself, make a program entirely commercial. The situation which causes the Commission concern is where a licensee quite clearly broadcasts program matter which is designed primarily to promote the sale of a sponsor's product or services, rather than to serve the public by either entertaining or informing it. The primary test is whether the purportedly non-commercial segment is so interwoven with, and in essence auxiliary to, the sponsor's advertising (if in fact there is any formal advertising)[5] to the point that the entire program constitutes a single commercial promotion for the sponsor's products or services. This test will be construed strictly and the determination that a program is entirely commercial will be reached only when the facts clearly justify that conclusion. The Commission's responsibility is to apply its policies to those situations where the facts make it obvious the entire program should be classified as commercial.

The petitioners have submitted numerous actual or hypothetical examples of programs typically broadcast by licensees and request the Commission's interpretation of its program-length commercial policies with respect to these examples. Because of the interest shown by petitioners and others in obtaining clarification, the numerous questions received by the Commission and its staff since the Public Notice was issued, and because information coming to the Commission's attention indicates that some licensees, either out of confusion about or disregard for the program-length commercial policies, continue to

[3] In this regard, see specifically the following sections of the Commission's Rules: 73.112 (a)(2), et seq. (AM); 73.282(a)(2), et seq. (FM); 73.670(a)(2), et seq. (TV).

[4] NCCB also urges that the Commission open the proceeding to a formal inquiry if it decides that the program-length commercial policies warrant revision. The Commission believes that revision of the basic program-length commercial policies is not warranted and that a formal inquiry would not be useful at this time. The Commission's statements herein provide clarification of the statements set forth in the February 22, 1973, Public Notice on program-length commercials and similar statements contained in its prior decisions in this area.

[5] Some program-length commercials contain no separate or formal advertisements as such.

broadcast program-length commercials, it is believed that further interpretation and clarification of policy is warranted. The Commission has, therefore, set forth below a number of interpretative examples in question-and-answer form based in part upon the examples in petitioners' pleadings and in part upon other questions and information received by the Commission subsequent to the issuance of the Public Notice of February 22, 1973.

No attempt has been made to answer all of the numerous hypothetical questions asked, since many of them are repetitive and are variations of the same factual theme. Moreover, it would be impractical, if not impossible, to formulate rulings in advance regarding every conceivable type of program. Rather, the examples and interpretations are intended to provide licensees with a fuller understanding of the standards the Commission employs in determining what constitutes a program-length commercial in several areas of programming. Obviously, many questions will be close and, as in many other areas of Commission policy, the Commission will not impose sanctions if a licensee appears to have given careful consideration to the many factors involved in arriving at a good-faith determination as to whether a particular program is a program-length commercial under the Commission's policies. Each of the rulings issued to date has been concerned with obvious situations in which the licensee knew or reasonably should have known that the program was entirely commercial because the program's non-commercial segment was so closely interwoven with the commercial promotion of the sponsor's products or services.[6]

Petitioners' pleadings indicate that one popular program format that causes the broadcast licensee concern in the program-length commercial area is the sponsored "remote" broadcast, presented live or pre-recorded from a location other than the licensee's studios. Such remote broadcasts include, but are not limited to, the presentation of shopping center openings, county fairs, expositions and boat shows, and broadcasts from retailers' showrooms. The Commission notes that such remote broadcasts are not necessarily commercial, even when spots are sold to merchants or exhibitors sponsoring the broadcast. As in other types of programs, the crucial consideration is the extent to which the program content promotes the commercial interests of the sponsor. On the basis of the facts, the remote broadcast may constitute a program-length commercial in at least two situations: (1) when the allegedly non-commercial segment is so closely interwoven with the sponsor or sponsors' commercial announcements that the "non-commercial" segment has achieved a substantial identity with the sponsor's commercial interests, or (2) when no formal commercial spot announcements, as such, are broadcast but the presentation is sponsored and the program clearly is devoted to promoting the sponsor's products or services, as for example, a sponsored remote broadcast from a shopping center which devotes a large portion of time to displaying the products of the merchant-members of the sponsoring association.

[6] The Commission's prior rulings include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); and *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972); and *WFIL, Inc.*, 38 FCC 2d 411 (1972) and decisions cited in footnote 2, *supra*.

Similar considerations apply to the other types of programs set forth below.

The Commission reiterates its position that its function is not to pass upon the desirability or quality of a questioned program, but on the basis of the facts peculiar to each situation to determine whether the non-commercial segment of the program is so closely interwoven with the sponsor's commercial messages that it is apparent that the program as a whole promotes the sponsor's products or services.

The NAB suggests that if the Commission considers the grand opening of shops or shopping centers to be totally commercial in nature, it should exempt such remote broadcasts from its policies when they are broadcast on an infrequent basis, e.g., once a month, on the grounds that these broadcasts contain substantial public interest value. However, the Commission believes that there is no basis for such an exemption if the Commission's program-length commercial policies are to be applied and enforced in any consistent manner. As the examples given below indicate, coverage of grand openings is not inconsistent with the Commission's policies provided that the licensee takes steps to ensure that the non-commercial portion does not achieve a substantial identity with the sponsor's advertising.

Questions have also been raised as to whether a licensee may broadcast a program-length commercial if it logs the entire program as commercial and the total commercial time does not exceed whatever representations it made to the Commission regarding the maximum commercial content per hour. A specific example has been devoted to this question in view of the number of inquiries. See example 27(Q).

A number of questions have been asked regarding religious and political programs. The Commission has confined application of its program-length commercial policies to programs concerning the sale of goods or services and will continue to do so. Specific examples below clarify the Commission's policies in this regard. Many questions have been received by the Commission regarding the broadcast of musical programs sponsored by recording companies or record shops. Such questions are dealt with in example 8(Q) through 12(Q).

The NAB also asks whether an exemption from the Commission's program-length commercial policies is warranted for "want ad and classified programs" because of the public interest value the NAB asserts attaches to the broadcast of such programs.[7] As explained in the answer to Question 29, a classified ad or swap shop program for which no charge is made to any advertiser is not a commercial program and therefore does not fall within the scope of the program-length commercial policy. Likewise, where the individual advertisers are not charged for their ads but where a single advertiser pays for the program and presents only his own discrete advertisements unrelated to the classified ads and in the quantity normally allowed by the station, the program does not constitute a program-length commercial. The only circumstance to which the program-length commercial policy applies is that in which each person pays for the broadcast of his own classified-type advertisement, since such a program is entirely com-

[7] The Commission, on one occasion, approved one such classified advertising proposal on a limited and experimental basis. *McLendon Pacific Corporation*, 7 RR 2d 653 (1966).

mercial in content. Even in this situation, we are granting a limited exemption to the licensee from the program-length commercial policy, provided no more than 15 minutes per day is devoted to such programming and provided further than the advertisements are sponsored by private individuals rather than commercial enterprises. This limited exemption is warranted in our opinion because the classified ad or swap shop program may provide the only broadcast vehicle for an individual wishing to place a short advertisement at a reasonable cost. See answer to Question 29 for further discussion of this matter, including the logging of commercial content of such programs.

It is hoped that the specific examples contained in this Notice will provide substantial guidance to licensees. We repeat our statement in our previous Public Notice that the Commission considers the broadcast of program-length commercials to involve a serious dereliction of duty on the part of the licensee, and the Commission will impose sanctions when its believes sanctions are required to bring about a discontinuance of such practices.

1. (Q) A new shopping center opens. An association composed of the 10 merchants doing business in the center purchases one hour or more of time from a local television or radio station to cover opening day festivities. Ten one-minute commercial spots throughout the hour are given the association's members to promote their products and services. The station enters these 10 minutes on its logs as commercial announcements. Additionally, the station and the merchants' association tacitly agree that most of the time during the purportedly non-commercial segment of the coverage will be devoted to interviews with the owners of the shops, who will promote their shops and the merchandise for sale. Does the entire program constitute a program-length commercial?

(A) Under the Commission's previously stated standards, the entire program should be considered commercial because the purportedly non-commercial segment is closely interwoven with the commercial segments. Even though the purportedly non-commercial segment may contain information and some entertainment, these features are clearly incidental to the commercial promotions of the merchants' businesses. The fact that the association has purchased the entire broadcast period and has in effect dictated that most of the "non-commercial" segment will advertise the association's members and their merchandise indicates that the licensee has presented the program mainly to promote the sponsors' products and services. The sponsorship arrangement hypothesized in this example is not on its face violative of the Commission's program-length commercial policies. When, however, the facts indicate that the non-commercial segment is so closely interwoven with the sponsor's commercial promotions and has achieved a substantial identify with the products or services being advertised by the sponsor, the program must be considered a program-length commercial.

2. (Q) The licensee decides to cover one hour of a shopping center's grand opening as it own program. It sells 10 minutes of commercial spots to five of the 10 merchants doing business in the new center. These 10 minutes are logged as commercial announcements. Without consulting the five sponsors, the station decides to cover in a minimal fashion the ribbon-cutting ceremonies and speeches by the president of the center's association, and to interview shoppers. Additionally, the sta-

tion instructs its reporters and camera crew to devote a substantial portion of the non-commercial segment to covering the products and services of the five sponsors. Little or no attention is given to the other merchants and none to their products. Is this entire one-hour program a program-length commercial?

(A) This program so closely and substantially intermixes the content of the "non-commercial" portion with the commercial messages of the five sponsors that the program in its entirety must be considered a program-length commercial. On these facts, it appears that the entire hour was intended to induce the program's viewers to patronize the program's sponsors. Coverage of the speeches and interviews is not controlling in this example since such coverage was incidental to the commercial promotion.

3. (Q) A bank agrees to sponsor a one-hour broadcast of the opening of the city's new civic center, auditorium and theater complex. The complex is the first built in a period of years and includes facilities which house the city's various drama and music companies. The complex was financed by the sale of municipal bonds which the sponsoring bank underwrote. Proposed coverage includes speeches by the city's mayor, city assembly chairperson, the sponsoring bank's president, whose remarks generally relate to the functions the complex will serve but also refer in passing to the bank's role in the financing of the complex, and general coverage of other events and interviews. Additionally, approximately 30 minutes is to be devoted to a narrative discussion of the development of the city's drama and music companies, which have achieved excellent regional reputations over the years. The bank receives 12 one-minute commercial spots. One-half of these spots are broadcast live from the site of the opening day's ceremonies; the rest are recorded. Three of these spots discuss the financial strategies and techniques employed by the bank in establishing and underwriting the bond structure for financing construction of the complex. The remaining spots are general promotions for the bank, emphasizing its role in the community and its various savings, loan, trust and securities activities. Does the entire sixty-minute program constitute a program-length commercial? If not, what portion of this one-hour program should be counted as commercial?

(A) The 12 one-minute spots promoting the bank are clearly commercial announcements and under the Commission's logging rules must be logged as such. The basic question is whether the non-commercial and commercial segments are so interwoven as to make the entire program a commercial advertisement for the bank. Under the circumstances presented in the example, only the 12 one-minute commercial spots need be logged as commercial matter. This program is not one contemplated by the Commission's program-length commercial policies because the noncommercial presentation is unrelated to the bank or its services and because the 12 commercial messages presented by the bank are separate and distinct from the non-commercial segment of the broadcast, which contains no cross-references to the services in which the bank was engaged. The mere reference to the bank's role, made in passing by the bank's president in the speech on opening day, is not significant when considered in the context of the entire program.

4. (Q) A radio station broadcasts a daily one-hour program from the showroom of a local automobile dealer. The dealer has purchased 15 one-minute commercial spot announcements. The non-commercial portion of the program consists of talk or comments and the playing of records by the station's disc jockey and is presented in the same fashion as if it were originating in the station's studios. At the beginning of the program and the station break on the half-hour, the disc jockey announces that the program is being broadcast from the automobile dealer's showroom. Although the commercials are read by the same disc jockey playing the records, they are separate and distinct from the program content, and the disc jockey makes no cross-references during the entertainment portion of the program to the automobile dealer's products and services. Does this program constitute a program-length commercial?

(A) No. Only the 15 minutes of commercial announcements and the few seconds for the opening and mid-point references to the fact that the program is being broadcast from the dealership need be logged as commercial. In this case, the separation between program content and commercial material is carefully maintained. An opposite conclusion might result if during the non-commercial portion the disc jockey were to refer to the dealer's products or services or otherwise promote the dealer's business interests.

5. (Q) A local restaurant or night club provides musical entertainment nightly. It purchases one hour of broadcast time per week from a radio station for live coverage of the entertainment from the restaurant. Ten separate one-minute commercial spots for the restaurant are aired, as well as informal mentions, made from time to time during the broadcast, of the fact that the restaurant provides nightly entertainment. Listeners are repeatedly urged to patronize the restaurant. Two or three interviews with the restaurant's patrons are broadcast, during which the announcer questions whether the patrons are enjoying themselves. What portion of the broadcast should be logged as commercial matter?

(A) The question is whether the non-commercial segment of this program is so closely interwoven with the commercial promotions and interests of the sponsor as to constitute a continuous program-length commercial. In the example given, in addition to the formal commercials, the announcer (1) repeatedly identifies the restaurant as the site of the broadcast; (2) repeatedly mentions that the restaurant provides nightly entertainment; (3) repeatedly urges listeners to patronize the restaurant and (4) conducts interviews with patrons which tend to promote the restaurant. Thus, it appears that the entertainment portion of the broadcast is so closely interwoven with the promotion of the sponsor's services that the entire program consists primarily of an inducement to listeners to avail themselves of those services. The broadcast is therefore a program-length commercial. While such sponsorship arrangements are not *per se* prohibited, licensees must make certain that commercial advertising remains separate, distinct and wholly apart from the non-commercial segments of the program. When a program's non-commercial segment has achieved a substantial identity with the sponsor's promotion of its products or services, the program in its entirety must be considered commercial.

6. (Q) A well known restaurant in a major city and a local radio station have made the following agreement: Each week the station interviews a well-known personality active either in politics, the arts, athletics, or business. The program is one hour in length and is broadcast live each week from the restaurant at noon. The restaurant provides the luncheon and cocktails at no cost for the announcer and the person interviewed. A large, national food processor sponsors the one-hour broadcast and is allotted five two-minute commercial spots to be broadcast during the hour. At the beginning and end of the program and at each half-hour station break, the following announcement is broadcast: "Luncheon at ABC's, today with Richard Roe, is being (has been) brought to you by XYZ Corporation." No other reference to the restaurant is made during the program and no reference is made during the commercial spots to the fact that the sponsor distributes its products to the restaurant from which the interview is being broadcast. The interview is conducted by an employee of the station. What amount of time should be considered commercial?

(A) Only the commercial spots and the occasional references to the XYZ Corporation must be logged as commercial time. Because the licensee presents a program which keeps the commercial messages separate and distinct from the matters discussed during the interview, avoids promoting or mentioning the services of the restaurant more than necessary to carry out the interview, and makes no cross-references to the sponsor's business relationship with the restaurant, the broadcast cannot be considered a program-length commercial. Even though the restaurant provides the bill of fare without cost, no mention is made of that fact nor do the restaurant or sponsor dictate or influence the program's content to promote their products or services.

7. (Q) Same situation as in 6, but the restaurant is located in and operated by a performing arts center. The center buys fifteen one-minute spots to be broadcast during the hour. An interview at noon is conducted by the center's director and features only prominent performers from the casts of the production presented at the center during the week of the interview. The spot announcements promote the center's current attractions in which the interviewees appear. During the interview, the camera pans the center's restaurant, while the interviewer points out the restaurant's different features and refers to its swift and courteous service. Shots of food being prepared by the chefs in the kitchen are shown. The interview is generally limited to a discussion of the performer's roles in the productions billed at the center at the time of the interview, reviews of the productions by the city's newspapers and reactions of the audiences to the performances. What portion of this one-hour program constitutes commercial announcements for the center?

(A) The entire program must be considered as a program-length commercial. Although portions of the interview may possess informational and entertainment value, it appears that these aspects are incidental to the promotion of the center's restaurant and the performances taking place at the center. It appears further that the licensee has permitted the entire program to be shaped by the commercial interests of the center and has permitted the non-commercial portion of the program to achieve a susbstantial identity with the services being

promoted in the commercial spots. Interviews with actors, musicians, dancers, etc., can, of course, be conducted during programs sponsored by an arts center where the commercials are separate and distinct from the program content. Discussions of the performer's role in a current play and reference to appearances at the center do not violate the Commission's policies, provided that such presentations are not so closely interwoven with the commercial promotions. In the example, the interview is confined to the performers' roles in the productions at the center and thus appears essentially to constitute an advertisement for the center.

8. (Q) A local radio station broadcasts a one-hour program of popular music. The hour is purchased by a record manufacturer which presents twelve one-minute commercial spots. The disc jockey selects all the records played without regard to their manufacturer, although some of the records played are those of the sponsor. None of the records is identified by label and the commercial spot announcements generally promote the sponsor's recordings. How much of this program is commercial?

(A) Only the twelve one-minute spot announcements must be logged as commercial matter. Because no cross-references to the sponsor's records are made between commercial and program content, the commercial and non-commercial segments of the program are separate and distinct, and it cannot be said that any substantial interweaving of the commercial and non-commercial segments of the program has occurred.

9. (Q) Same facts as above, except that all of the records played are manufactured by the sponsor, and the spot announcements frequently cross-reference and promote the records which are played during the one-hour broadcast. Additional announcements, stating that all the records played during the broadcast are those of the sponsor and available for purchase, are given at the beginning and end of the program. How much of this program is commercial?

(A) The entire one-hour broadcast constitutes a program-length commercial. Since frequent cross-references are made during the commercial spots to the records played, the commercial and non-commercial segments are so closely interwoven as to be indistinguishable, and the entire program must be considered as commercial. Moreover, the fact that only the sponsor's records are played may raise questions as to whether the licensee has relinquished programming control to the sponsor, although this fact in and of itself does not establish abdication of program control. If the licensee has reviewed the proposed program in advance and made a good faith determination that the sponsor's records accord with the licensee's programming policies and their broadcast will serve the public interest, the fact that only the sponsor's records are played does not prove relinquishment of licensee control.

10. (Q) A record manufacturer purchases one-hour from a radio station and presents one-minute commercial spot announcements during the hour. All of the records presented during the hour are those of the sponsor, and announcements are made at the beginning and end of the hour identifying the sponsor and stating that all the records broadcast were those manufactured by the sponsor. Although the one-minute spot announcements generally promote the sponsor's records,

none of the spots make cross-reference to the records that are played during the program. Is this program entirely commercial?

(A) No. Only the one-minute commercials and the announcements made at the beginning and end of the program must be logged as commercial matter. Although all the records played are manufactured by the sponsor and although the announcements promote the products of the sponsoring manufacturer, the spot announcements are discrete and make no cross-references to the records that are aired during the hour. In a program such as this, where commercial announcements contain general advertisements for the sponsor and make few if any cross-references the sponsor's products or services which are presented during the non-commercial segment, no obvious interweaving of the program's commercial and non-commercial portions has occurred, and the Commission will not find that a program-length commercial was broadcast. As noted in the answer to Question 9 above, a record program which presents only the sponsor's records does not on its face violate the Commission's program-length commercial policies. However, if frequent cross-references to the sponsor's records are made, it would appear that the commercial segment is so closely interwoven with the non-commercial segment that the entire program would constitute a program-length commercial.

11. (Q) A classical music station selects its own music, but some of its programs are sponsored by record manufacturers or stores. The station prepares a one-hour program on the career of Leonard Bernstein. The program consists of a narrative concerning Mr. Bernstein's life, interspersed with selections from his recordings. Since Mr. Bernstein records exclusively for one company, the recorded segments would, of course, be from records made by that company. The record company also sponsors the broadcast of the program, inserting commercial spot announcements for its records therein. Is the program wholly commercial?

(A) The program involves considerations similar to those raised in Questions 8 through 10, above. If the commercial spots presented by Columbia make cross-references to the excerpted portions of Mr. Bernstein's recordings and encourage listeners to purchase the recordings, then the typical problems associated with the broadcast of program-length commercials would be present. If, however, the commercial announcements make no cross-references to the Bernstein recordings and the playing of the recordings is not accompanied by material promoting their sale, the Commission would not find that the presentation constitutes a program-length commercial. The facts that the record company sponsors the broadcast and that the featured artist records exclusively for the sponsor does not, absent other considerations, make the entire program commercial. Sponsorship identification announcements, or other similar announcements at the beginning or ending of the program, identifying the sponsor and the program's subject matter, i.e., that the program features Mr. Bernstein and is sponsored by the recording company, do not in themselves make the entire program commercial.

12. (Q) A large European record company buys three hours of time from a classical music station to present its new recording of *Carmen*. The record company uses six minutes of time for advertising messages,

but substantially all of the three hours is spent in performing the opera for the first time on the air in advance of its release to the public. Each of the six one-minute announcements identifies the recording as a new release from the record company and states the date recording will become available for sale. A brief statement is made at the end of the program again identifying the sponsor and the fact that the recording heard was made by the sponsor and is for sale. What portion of this three hour broadcast should be considered commercial?

(A) Although frequent cross-referencing of commercial matter and other program content may result in the commercial and "non-commercial" portions of a program becoming so inextricably intermingled that the entire program becomes commercial, we believe that there may be situations, such as that posed here, where the commercial references to the material constituting the body of the program are so infrequent that the two elements of the program cannot be said to be so closely interwoven as to make the entire program commercial. This would be true whether the body of the program consisted of classical or popular music, provided that the licensee itself made the determination that presentation of the recording was in the public interest. Thus, we believe that in this example, where only six one-minute commercial announcements and brief announcements at the open and close are given, it cannot be said that the program in its entirety constitutes a commercial message for the sponsor, and we believe that only the commercial announcements and those at the open and close need be logged as commercial. Although we decline to extend the scope of the program-length commercial policy to the three hour program cited in this question, licensees are expected to take cognizance of the fact that such programming has a potential for abuse if a sponsor promotes the sale of the very product being broadcast with any degree of frequency, taking into consideration the length of the program and the number of such promotional spots it contains.

13. (Q) A station broadcasts a 15-minute program which lists daily transactions in stock and bond issues. The transactions covered include only those of organizations doing business in the immediate metropolitan area and the program is entirely sponsored by one of the city's brokerage houses. An employee of the broker does the reports directly from the brokerage house and selects the issues to be covered on the basis of their interest to the community. Although a number of the issues reported or discussed are issues underwritten by the sponsoring broker, issues underwritten by the other brokers in the city are also included in the report. The program commences with a five-minute report on general market conditions, the averages on the major exchanges, and significant commercial news emanating from business and government. No commercial spots are broadcast, although the sponsoring brokerage house is identified as the sponsor at the beginning and end of the program. Is this program a program-length commercial for the sponsor?

(A) This program is not a program-length commercial. Neither the body of the program nor the initial and final identification of the sponsor makes cross-reference to the fact that the sponsor trades in any of the issues discussed, and the use of the sponsor's representative who randomly selects the stock issues and reports the business news

would not in and of itself make the entire program commercial. The Commission's policies pertaining to program-length commercials do not prohibit advertisers from sponsoring programs on subjects in which they may have a direct or related interest, if the various safeguards referred to in this Public Notice are adhered to. Moreover, the fact that a stock report may be announced as originating at the brokerage house does not, standing alone, make the entire program commercial. Where employees of the sponsor present the program, an identification of that fact must be made.

14. (Q) A retail book distributor purchases one-half hour from a local radio station to present a weekly book review. During the program, an employee of the sponsor reviews several new books on the best-seller list. Before and after the review of each book, the reviewer announces that each of the books reviewed is for sale at the sponsor's store. Additional references are made to books not specifically reviewed on the program and to the fact these books are for sale at the store. Six one-minute spot announcements are made promoting the sponsor's products and specifically refer to the books reviewed on the program. How much of this program is commercial?

(A) The non-commercial informational and entertainment portions of the program are so closely interwoven with the portions of the program advertising the sponsor's products that the entire one-half hour program must be considered a program-length commercial. References made at the beginning and end of book review programs indicating that the books reviewed are sold at the sponsor's store do not necessarily make such programs program-length commercials. Licensees, however, must take steps to ensure that the program's commercials remain separate and distinct from the book reviews. Furthermore, when an employee of the sponsor conducts the book review, disclosure should be made of the reviewer's relationship to the sponsor.

15. (Q) During a one-hour broadcast, the arts editor of a station reviews two books. A book store purchases the hour, and its advertisements are broadcast in close proximity to the book reviews. The books selected for review are chosen and reviewed by the editor according to his own standards, and no suggestion is made by the sponsor regarding selection of the books to be reviewed. There is no mention made that the reviewed books are available through the sponsoring book store. Should the amount of time consumed by the book reviews and the sponsoring book store's spots be considered commercial?

(A) Only the commercial spots advertising the book store must be considered commercial. The commercial messages of the sponsoring book store here are distinct from the informational segment. Absent specific identification of and cross-reference to the sponsor during the non-commercial segment, the fact that the book store purchases the entire hour with separate commercials for products sold by the sponsor does not make the broadcast a program-length commercial.

16. (Q) A direct broadcast from a local livestock market is sponsored exclusively by the livestock market. Information is given by a principal or employee of the market relative to prices for beef and pork, and other facts of importance to area farmers. The information also covers prices at other regional or national markets. Commercial announcements are not broadcast for the sponsoring market, which

realizes a commission on all livestock sales. Appropriate sponsorship identification is made at the end of each program. Is this program a program-length commercial under the Commission's policies?

(A) While it is implicit that the sponsoring livestock market has a commercial interest in informing the community of the prices of the products, and hence has a commercial interest in sponsoring such a livestock report, the commercial interests of the sponsoring market here appears to be incidental to the information segment of the program. The licensee need log only the specific commercial references. Programs of this nature, however, may become entirely commercial if from the facts of any situation presented it is apparent that the informational and commercial content are so inextricably interwoven as to constitute one continuing advertisement. The broadcast of commercial spots for the livestock market during the program would not change the conclusion reached here unless the commercials were interwoven with the program content in the fashion referred to in the introduction of this Public Notice. In each case the general principles applicable to all program-length commercials must be examined in relation to the facts of the case. Again, disclosure should be made of the fact that the person presenting the program is an employee of the sponsor.

17. (Q) A retail furniture outlet purchases commercial spot announcements to be presented during a station's one-half hour weekly program which features the art of furniture making. The program utilizes the expertise and personnel of small and large furniture manufacturers, including, from time to time, personnel employed by furniture manufacturers whose products are sold by the sponsor. Different topics, proposed and selected by a variety of furniture-making professionals and the station's program director, who conducts the program, are presented each week. The guests on the show make few if any references to the products sold, and the commercial announcements for the retail furniture outlet do not refer to the subject matter of the program. How much of this program is commercial?

(A) Only the commercial spot announcements must be entered on the station's logs as commercial announcements. The informational segment of the program does not exhibit a pattern of cross-referencing to the sponsor's products and does not primarily promote the sponsor's commercial interests. A program of this nature, broadcast live from the retail outlet, will not be considered a program-length commercial if the licensee complies with the usual program-length criteria set forth elsewhere in this Notice.

18. (Q) The furniture retailer buys one half-hour of time. No commercial spots are presented. The program is presented live from the sponsor's showroom each week and features an employee of the station discussing the sponsor's new furniture line and displaying the sponsor's furniture arranged in different suites. Each week some aspects of furniture care and repair are discussed. Periodic statements are made identifying the furniture as available for sale at the sponsor's showrooms, and, in addition to the necessary sponsorship identification announcement at the program's beginning, references are made to the fact that the program is originating live from the sponsor's showroom

where the furniture can be viewed. How much of this program is commercial?

(A) Although no commercial spots are presented, it appears that the program's format, the use of only the sponsor's furniture, and the repeated references to the sponsor and to the fact that the furniture is available at the sponsor's showrooms make this broadcast a program-length commercial.

19. (Q) A television station broadcasts a weekly fifteen-minute remote program from a hobby shop whose owner discusses all aspects of various hobbies and crafts. Three commercials are broadcast during the program by a station announcer. The commercials advertise the goods for sale at the hobby shop. The commercials are separate and distinct from the program content and do not refer to the items discussed during the program. How much of the program is commercial?

(A) On the facts stated, only the commercial messages need be considered commercial, since there appears to be no cross-referencing between the commercials and the instructional content of the program.

20. (Q) An entity producing a county fair and composed of ten of the main exhibitors at the fair purchase six hours from a local television station so that the station will broadcast two hours of the event live each day for three days. During the broadcasts, the audience is frequently urged to attend the fair in order to see the booths of the ten exhibitors. Most of each day's program is devoted to coverage of the exhibits of the ten sponsors. Each of the sponsors is given an opportunity to demonstrate his new lines of equipment. The remainder of the time each day is spent in general coverage of the fair and random interviews with attendees. No separate commercial spots are presented. What portion, if any, of the program is commercial?

(A) This program constitutes a program-length commercial. The broadcasts appear primarily to be advertisements designed to promote the exhibitors' products. See also prior examples regarding remote broadcasts.

21. (Q) A committee formed to promote a fair buys spot announcements to be broadcast during a station's coverage of the fair. The spots urge the public to attend the fair, but the station chooses the events and exhibits to be covered and the manner of covering them. The licensee believes that coverage of the new farm equipment would be of considerable interest to the community and each day devotes some time to covering one or more of the farm equipment companies demonstrating and displaying equipment at the fair. The farm equipment companies do not pay for the coverage. How much time of the fair coverage is considered commercial?

(A) Only the duration of the spot announcements for the fair itself must be logged as commercial. Although the program's "non-commercial" segment shows various types of farm equipment, the makers of the equipment do not pay for the broadcast coverage of it. The spot announcements urging attendance at the fair are separate from and unrelated to the coverage of events at the fair.

22. (Q) A non-profit charitable organization is engaged in theoretical and applied cancer research. This organization purchases thirty minutes from a local television station to present a film produced and directed by the organization. The broadcast includes a final ten-minute

segment which presents the chairperson of the organization, who discusses the organization's need for additional financial support and makes an appeal for private contributions. Does this program constitute a program-length commercial?

(A) No. Programs sponsored by non-profit organizations for the purpose of soliciting funds through the presentation and discussion of such organizations' non-profit activities do not come within the purview of the Commission's policies regarding program-length commercials. The Commission's program-length commercial policies pertain only to programs which promote the sale of commercial goods and services and, therefore, do not apply to programs sponsored by non-profit organizations to raise funds for their non-profit activities. Licensees broadcasting such programs are nevertheless required to make the standard sponsorship identification announcement and must log the program as sponsored by the particular non-profit organization as required by the Act and the Commission's Rules.

23. (Q) A religious organization sponsors a religious program during which no commercial products are advertised, but which includes solicitation of contributions to assist in continuing the religious activities of the organization. Is the program wholly commercial?

(A) No. In adopting the report and order amending the logging requirements for TV broadcasting stations (Now Sec. 73.670 of the Commission's Rules), the Commission stated:

> In connection with the logging of commercial continuity, a special problem is raised by certain sponsored programs wherein it is difficult to measure the exact length of what would be considered as commercial matter, e.g., some sponsored religious and political programs. For such programs we will not require licensees to compute the amount of commercial matter, but merely to log and announce the program as sponsored. This exception does not, of course, apply to any program advertising commercial products or services. Nor is the exception applicable to any commercial announcements. *Television Program Logging Rules*, 5 FCC 2d 185, 186 (1966).

This exception for sponsored religious and political programs, with the same provisio, was extended to the logging requirements for AM and FM broadcast stations (now Sections 73.112(AM) and 73.282 (FM)). *Program Log Rules*, 11 FCC 2d 992, 993 (1968).

24. (Q) A number of radio stations broadcast a weekly one-hour religious program featuring a well-known minister. Each radio station is paid by the minister for presenting the program. Thirty-five minutes of the program consists of a sermon delivered by the minister and/or a discussion of the merits of the particular religion. During the remaining twenty-five minutes, the minister plays recordings of gospel songs which the minister has composed or in which the minister has some other financial interest. The records are commercially marketed, and following the playing of each of the recordings, the minister announces that the selection played are available for purchase in record stores or by direct mail orders. How much of this program should be considered commercial?

(A) The first thirty-five minute segment of the program presents religious material covered by the exception cited in Answer 23 above, and therefore need only be logged and announced as sponsored by the minister. However, the second twenty-five minute segment is in substance an advertisement for the *commercial* sale of the records. The

exception is therefore inapplicable to this segment of the program, and all of the last twenty-five minutes must be considered commercial matter.

25. (Q) A radio station broadcasts a weekly thirty-minute program sponsored by a minister. The program consists of excerpts of recorded sermons delivered by the minister and is introduced, interrupted twice, and closed by one-minute announcements informing listeners that the sermons broadcast have been recorded by a commercial recording company and are available for purchase at selected record stores. In addition, each excerpt is introduced by a statement indicating that the sermon is for sale. How much of this program should be considered commercial?

(A) Although the sermons relate to religious matters, the accompanying announcements which cross-reference and promote the commercial sale of the recorded sermons make the entire program a program-length commercial. The logging exception for religious and political programming is inapplicable to a program "advertising commercial products and services," and, therefore, on the facts given here, the entire thirty minutes must be logged as commercial matter.

26. (Q) A national political party purchases two hours from a television network to present a program designed to solicit funds for the party's activities. The program features interviews with the party's major political figures and various forms of entertainment. Every five minutes a telephone number and street address is superimposed on the screen to indicate to viewers where a monetary pledge may be made. Throughout the program, references are made to the amounts being pledged, and from time to time a plea is made for private contributions to sustain the party's work. Will the Commission consider this program a three-hour program-length commercial?

(A) No. Since the program is sponsored by a political organization and does not in any manner involve the salability of commercial products or services, the logging exception for political broadcasts is therefore applicable, and stations carrying this program must merely announce and log it as sponsored by the particular party.

27. (Q) A realtor purchases fifteen minutes of broadcast time from a radio station to present a program advertising the realtor's listings. Although no commercial spots, as such, are presented, the program is clearly a program-length commercial, and the station logs the entire fifteen minutes as commercial, enters the realtor on its logs as the sponsor, and makes the appropriate sponsorship announcement before and after the fifteen minute program. The rest of the hour, approximately forty-five minutes, consists of uninterrupted programming unrelated to the fifteen minute presentation. No other commercials are presented during the remainder of the hour. The station has represented to the Commission that it will present no more than sixteen minutes of commercial matter in any given hour. May a station broadcast a program-length commercial if the total commercial time broadcast during the hour does not exceed the station's commercial representations?

(A) The broadcast of 15-minute program-length commercials, even though the time consumed by the program does not exceed the com-

mercial representations, has been held by the Commission to be inconsistent with the public interest. In *Letter to KCOP–TV*, Inc., 24 FCC 2d 149 (1970), we stated:

> As we have made clear, a pattern of presenting program-length commercials or programs with respect to which other factors indicate that the licensee is disregarding the interest of the public in its programming, will be considered as raising questions as to whether the licensee is operating in the public interest.

28. (Q) A realtor purchases one-half to present pictorial and narrative descriptions of houses which are stated to be for sale through the sponsoring realtor's agency. The program is uninterrupted. Is any portion of the program commercial?

(A) Under the Commission's policies and in accordance with its ruling in *WLAB, Inc.*, 37 FCC 2d 748 (1972), this entire program is commercial since the sole thrust of the program is the commercial promotion of the sponsor's products and services.

29. A number of questions have been received regarding the presentation of "classified ads" or "swap shop" programs and whether they fall under the Commission's program-length commercial policies. The following three hypothetical examples and ensuing interpretations will clarify the Commission's program-length commercial policies in this area.

(i) (Q) The station presents a one-half hour program advertising for sale or offering for trade the property of individuals other than commercial enterprises. No charge is made by the station for the individual announcements. Do the Commission's program-length commercial policies apply to this situation?

(A) Where *no* charge is made for the broadcast of any matter, the Commission's commercial policies do *not* apply and none of this time need be logged as commercial matter. But see, example 29 (iii) (Q), below.

(ii) (Q) A local commercial enterprise purchases an hour from the station and receives a schedule of 15 one-minute advertisements which promote the sponsor's products or services. The remainder of the program consists of announcements advertising for sale or trade the property of individuals, who make no payment to the station for the broadcast of those announcements within that sponsored hour. Is this program entirely commercial and what portion should be logged as commercial matter?

(A) The program is not a program-length commercial and only the 15 one-minute commercial spot announcements for the overall sponsor must be entered on the station's logs as commercial matter. Because no charge is made to the individual, non-commercial advertisers, and because the commercial announcements for the program sponsor are separate and distinct from and do not cross-reference the items being advertised in the remainder of the program, no program-length commercial questions are raised.

(iii) (Q) Individual, non-commercial advertisers are charged a fee by the station to offer for sale or trade their property. The station presents a daily 15-minute program featuring the individuals' announcements. Is this a program-length commercial and what are the Commission's policies on this type of program?

(A) This program is a program-length commercial, but the Commission believes that special circumstances warrant a limited exemption from its program-length commercial policies, since these programs may present the only broadcast vehicle where an individual may advertise property at a reasonable cost. To that end, the Commission will not consider to be contrary to the public interest the broadcast of programs consisting of paid announcements which advertise for sale or trade the property of private individuals, as contrasted with commercial business enterprises. Such programs are to be limited to no more than 15 minutes per day and must be computed and logged as commercial matter. Thus, for example, if a radio station has represented to the Commission that it will present no more than 18 minutes of commercial matter per hour and the station devotes a 15-minute segment to broadcasting classified advertisements paid for by private parties, the station would be required to log that 15 minutes as part of the 18 minutes it has represented to be its commercial maximum per hour. The exemption here granted contrasts with the Commission's program-length commercial policies articulated in Letter to *KCOP-TV, Inc.*, 24 FCC 2d 149 (1970) and example 27, *supra*, because of the special considerations set forth above with respect to advertisements for private individuals as contrasted with commercial enterprises. If the mere format of a classified advertisement program were the determining factor in granting an exemption, the program-length commercial policy might well become meaningless, since a commercial enterprise such as a department store could, by phrasing its sales messages in the form of "classified ads" for different products sold by the store, gain an exemption from our program-length commercial policies for a wholly commercial program.

30. (Q) A leading professional tennis player delivers a commercial extolling the virtues of the sponsor's tennis racquet during coverage of a championship match during which the player uses the sponsor's racquet. Is all or part of the coverage commercial?

(A) The fact that the player in a televised match advertises the product being used in the match does not in and of itself make the entire program commercial. Manufacturers of sports equipment obviously would be interested in sponsoring sports events or events in which their products are used. A problem would arise if the coverage of the event were to be influenced because of the sponsor's interest in promoting its product. Thus, if during coverage of the match the licensee repeatedly showed close-ups of the tennis racquet made by the sponsor so that the viewer would clearly see the name of the manufacturer and if the player were instructed to make references to the racquet in interviews before or after the match, the entire program might become commercial. Similarly, if the announcer made references to the use of the racquet in describing the play, the program might become commercial.

31. (Q) An auto race track purchases three hours of time. Fifty per cent of the time is devoted to music, 10 per cent to news, 15 per cent to interviews with racing drivers in which references are made to upcoming races held only at the sponsor's track and the final 25 per cent is devoted to direct promotion of attendance at the races. Is all or part of the three-hour program commercial?

(A) That portion of time devoted to music and news would not be considered commercial. If interviews conducted with the racing drivers are confined almost entirely to matters pertaining to the sponsor's track, and constant reference is made to the track, the races, the admission price, etc., that portion of the program would be considered commercial. The final 25 per cent of the program is commercial in nature since it is devoted entirely to promoting attendance at the races. Urging attendance at a sports event by the sponsor of the event would not make the entire sports event commercial. If, however, as in the example given, a specific period of time is devoted entirely to promotion of the event, that time would be considered commercial and the licensee must log that time as commercial.

Action by the Commission January 23, 1974. Commissioners Burch (Chairman), Lee, Reid and Wiley, with Commissioner Hooks concurring.

F.C.C. 74–48

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of RKO GENERAL, INC. (ASSIGNOR) AND HEFTEL BROADCASTING-BOSTON, INC. (ASSIGNEE) For Commission Consent to Assignment of Station WROR(FM) Boston, Mass.	File No. BALH–1740 BASCA–528

MEMORANDUM OPINION AND ORDER

(Adopted January 16, 1974; Released January 25, 1974)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT. COMMISSIONER HOOKS CONCURRING AND ISSUING A STATEMENT.

1. We have before us for consideration a petition for Reconsideration of the Commission's action of August 2, 1973, which granted the subject applications and held invalid an agreement between Heftel and Boston Community Media Committee, Minority Caucus (BCMC),[1] filed by BCMC.

2. Also before us is a letter dated September 20, 1973, from counsel for BCMC which argues that, even though the parties to the subject applications have determined not to consummate, the BCMC Petition for Reconsideration has not been rendered moot.[2] We disagree. The agreement was submitted as an amendment to the application on July 18, 1973. Consequently, when the parties determined not to consummate the assignment there was no longer anything before us upon which we could act. Further, since Heftel had determined not to become the licensee of Station WROR(FM), the agreement, by its own terms became null and void. Since the applications of which the Heftel-BCMC agreement was a part is no longer before us and since the agreement itself is no longer operative, BCMC's Petition for Reconsideration will be dismissed as moot.

3. The Commission carefully considered the agreement between Heftel and BCMC and as stated in the letter of August 2, 1973, concluded that the agreement would appear to improperly curtail the assignee's discretion in the areas of programming, program scheduling and employment practices to a degree which appeared contrary to the public interest. We stated that any agreements must fully recognize that the licensee is to retain ultimate responsibility in the areas of

[1] Letter to *Heftel Broadcasting-Boston, Inc.*, 42 FCC 2d 1076, 28 RR 2d 167.

[2] By letter dated September 28, 1973, the Commission advised the applicants that all records pertaining to the subject assignment had been retired to the Commission's closed files and another related application was dismissed as moot.

programming, employment and compliance with equal employment statutes.

4. The agreement also required Heftel to pay BCMC an annual "subscription fee" of either $1,000, or 1% of the net profits, whichever is greater. This caused us serious concern. We stated that generally speaking, the Commission has no objections to licensees reimbursing any one for services rendered in assisting it in the operation of its facility, but that this agreement would appear to go far beyond that since it in no way appeared to relate to services rendered nor did it bind BCMC to do anything. Therefore, we concluded that our approval of such a provision would be clearly contrary to the public interest.

5. Accordingly, the Petition for Reconsideration filed by BCMC on September 5, 1973, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CONCURRING STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS

Pragmatically, the dissolution of the sales agreement attending the proposed assignment of WROR–FM from RKO General to Heftel Broadcasting renders the protestations of the Boston Community Media Committee, Minority Caucus (BCMC) moot for purposes of the instant action and I, therefore, concur in the discharge of its Petition for Reconsideration. But, the happenstance of being legally moot is not coextensive with being meaningless in any other sense and a few comments on the pregnant substance of BCMC's opposition is in order in view of my dissent to the Commission's discard of the original agreement between BCMC and Heftel.[1]

Because of its continuing interest in the performance of Boston stations, BCMC sought out Heftel which was then attempting to procure WROR–FM from RKO General and worked out a rather comprehensive agreement as to prospective station operation with Heftel.[2] While the agreement was amendable to Heftel, the Commission submitted that the agreement ". . . so curtails the licensee's responsibility in programming and employment areas, that the agreement would appear to be contrary to the public interest." 42 FCC 2d at 1077. Accordingly, the Commission dismissed the agreement out of hand although it indicated that BCMC had 30 days in which to Petition for Reconsideration (*id.*). In other words, because the agreement was unacceptable in every last respect, it was rejected completely in connection with the RKO-Heftel assignment, notwithstanding its significance as

[1] In the Commission's original action, I concurred in part and dissented in part to the letters of Heftel and BCMC, *Heftel Broadcasting-Boston, Inc.*, 42 FCC 2d 1076 (1973), and had thought to issue a statement clarifying my views. However, the Commission's action was taken on August 2, 1973, and before I could release my separate statement, BCMC, on September 5, 1973, filed a Petition for Reconsideration. Thinking that the Commission, on Reconsideration, might see the error of its ways, I deferred issuance of my statement pending action on the BCMC Petition. But, before the Commission could act on BCMC's Petition, thus providing me with an opportunity to express my views both on the original action and on the Petition for Reconsideration, we were advised that the proposed assignment had fallen through and on September 28, 1973, we notified the parties that our file on the matter was closed, hence mooting the BCMC Petition. Consequently, the Commission's action herein presents the most timely occasion for making up an otherwise lost opportunity.

[2] For details of the agreement, see the companion letters to BCMC and Heftel reported at 42 FCC 2d 1072 and 1076 (1973), respectively.

an integral part of the understanding between the proposed, incoming licensee and the interested community group, BCMC.

While I concurred, in principle, with the proposition that the agreement between BCMC and Heftel might have been so broadly drawn as to impermissably impinge on the licensee's statutory duty to retain control over non-delegable activities, I dissented to the absolute dismissal of the agreement, thus leaving the Commission at liberty to approve the assignment unconditionally and unaffected by the agreement, the greater part of which agreement was apparently satisfactory. It was my view that the Commission, instead of rendering the agreement a complete nullity in connection with the assignment, should have either (a) purged only those portions of the agreement mandating disapprobation and allowed the balance to stand, or (b) advised the parties as to those specific portions deemed illicit and permitted them to renegotiate the terms in conformance with our determination. These, I believed, were the equitable steps rather than effectively washing out the entire, painfully crafted, rapproachment to which the parties had voluntarily assented after days of stubborn labor.

Ironically, and constituting a source of double frustration, the Commission—*on the very day it wiped the BCMC-Heftel agreement off the boards in totality*—followed the procedure outlined in (b), above, with respect to a community group/assignee agreement in Sylvania, Ohio. After finding that the agreement between the Citizens Committee to Keep Progressive Rock and the proposed assignee of WXEZ–FM, Midwestern Broadcasting, Inc., improperly impeded the licensee's programming flexibility (as in the case of the BCMC-Heftel agreement), the Commission held:

> We find that by this agreement Midwestern has improperly relinquished its flexibility to make programming decisions during the upcoming license term. Accordingly, it terms contravene the public interest and we therefore must disapprove it. As stated above, were it not for the agreement, we would, in view of the undisputed existence of an adequate progressive rock listening alternative, be prepared to reaffirm the Broadcast Bureau's grant of the assignment. *Since the Committee's objections were withdrawn on the basis of that agreement, however, we will not take any action which would prejudice the Committee's right to resubmit those objections. Accordingly, action on the WXEZ(FM) assignment application will be deferred for at least thirty (30) days from the date of this order.* If after thirty days (a) no objections to the format change have been filed and (b) our action disapproving the agreement has not been contested, we will expeditiously proceed to a decision in this case consistent with this order.
>
> Accordingly, IT IS ORDERED THAT the agreement between the Citizens Committee to Keep Progressive Rock and Midwestern Broadcasting Company is hereby disapproved *without prejudice to the Committee's resubmission of its objections to the format change within thirty (30) days from the date of this order.*

Twin States Broadcasting, Inc., 42 FCC 2d 1091, 1093 (1973). (Emphasis added.) We did not, as with BCMC, sweep the Sylvania

agreement wholly out of the picture because of Progressive Rock's overreaching covenant with Midwestern; instead, we identified the offensive aspects, returned the agreement to the parties with an enjoinder to resubmit a consonant agreement within 30 days, and—most importantly—deferred action on the assignment application for those 30 days pending receipt of an amended compact in harmony with our specific holdings.

Therefore, in view of my discountenance of the procedure used in handling the BCMC-Heftel agreement and the inconsistency with our parallel action in the *Twin States* situation (with which latter procedure, I am in general accord), I found cause to dissent to all of the above cited actions. It is my conviction that the procedure utilized in *Twin States* is the appropriate method for administering community group/licensee agreements and that such practice should be *consistently* entertained in the future. It does not encourage community group participation, as this Commission claims to, to cavalierly demolish and render meaningless an entire agreement, one taking perhaps months of diligent, good faith effort, because certain, severable clauses (many, minor) contravene the majority's perceptions of acceptability. That amounts to throwing the baby out with the bath water with a vengeance and I'll not partake of the result.

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F.C.C. 73D–63

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of: SANDPIPER BROADCASTING CO., INC., WEST PALM BEACH, FLA. For a Construction Permit	Docket No. 19602 File No. BPH–7533

APPEARANCES

B. Jay Baraff and *Robert L. Olender* on behalf of Sandpiper Broadcasting Co., Inc.; and *Joseph Chachkin* on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

SUMMARY

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE CHESTER F. NAUMOWICZ, JR.

(Issued December 7, 1973; Effective: January 29, 1974 pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. On October 13, 1972, the above-captioned application was consolidated for hearing with the applications of Guy S. Erway, Sun, Sand and Sea, Inc., and Marshall W. Rowland. Among the issues designated were two going to the basic qualifications of Sandpiper:

> 5. To determine whether Sandpiper Broadcasting Co., Inc. has reasonable assurance that its proposed transmitter site is available.
>
> 6. To determine, in the event that Sandpiper Broadcasting Co., Inc. has available a studio site outside the city of West Palm Beach, whether good cause exists for locating its main studio site outside the city of West Palm Beach, and, if so, whether the main studio location would be consistent with the operation of the station in the public interest.

2. The applicants published notice of the hearing and notified the Commission thereof pursuant to the governing statute and rules. By order of the presiding Judge released May 2, 1973, the application of Sun, Sand and Sea, Inc. was dismissed.

3. On August 28, 1973, the remaining applicants filed a Joint Request, etc. which contemplated the dismissal of the Erway and Rowland applications and the issuance of a Summary Initial Decision granting the Sandpiper application. On December 6, 1973, the presiding Judge issued an order severing the remaining applications each from the other, and dismissing the applications of Erway and Rowland

while retaining them in hearing status for the sole purpose of determining whether they are eligible to receive reimbursement of certain expenses from Sandpiper.

FINDING OF FACT

4. On August 27, 1972 Sandpiper entered into a 10-year lease of the property on which it proposes to locate its transmitter and studio. The site is approximately 800 feet north of the city limits of West Palm Beach. It was selected as a transmitter site because of spacing requirements to Station WHMS, Hialeah, Florida. The site is easily available to residents of West Palm Beach via a major highway.

CONCLUSIONS

5. Sandpiper's proposed transmitter-studio is available to it through an existing lease. The transmitter site was selected to meet spacing requirements, and in view of its close proximity to and easy access from West Palm Beach good cause exists for permitting the studio to be located at the transmitter site.

6. The applicant having been found otherwise qualified in the order of designation, the public interest would be served by grant of the application.

Accordingly, IT IS ORDERED, That unless an appeal is taken to the Commission by a party or the Commission reviews the Summary Initial Decision on its own motion pursuant to Rule 1.276, the application of Sandpiper Broadcasting Co., Inc. IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
CHESTER F. NAUMOWICZ, JR., *Administrative Law Judge.*

F.C.C. 73-1342

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SPECTRUM CABLE SYSTEMS, INC., AGAWAM, MASS.	CAC-381, CSR-148, CSR-181
SPECTRUM CABLE SYSTEMS, INC., WEST SPRINGFIELD, MASS.	MA046
SPECTRUM CABLE SYSTEMS, INC., WESTFIELD, MASS.	CAC-601
	MA053
For Certificates of Compliance	CAC-602
and	MA052
SPECTRUM COMMUNICATIONS, INC., WESTFIELD, MASS.	CPCAR-342
For Construction Permit in the Cable Television Relay Service	

MEMORANDUM OPINION AND ORDER

(Adopted: December 19, 1973; Released: January 4, 1974)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT.

1. On April 13, 1973, Springfield Television Broadcasting Corporation, licensee of Television Station WWLP, Springfield, Massachusetts, and The WHYN Stations Corporation, licensee of Station WHYN-TV, Springfield, Massachusetts, each filed a petition for reconsideration directed against the Commission's action in *Spectrum Cable Systems, Inc.*, FCC 73-257, 40 FCC 2d 1019.[1] These petitions were opposed by Spectrum Cable Systems, Inc., proposed operator of cable television systems at Agawam, West Springfield and Westfield, Massachusetts, and Springfield Television has replied.

2. In its petition, WWLP argues that: (a) it has made a sufficient threshold showing of the adverse impact of Spectrum's proposed signal carriage on WWLP's economic viability to warrant the Commission's further consideration in a full evidentiary hearing; (b) the Commission has created a "delicate balance" of UHF and VHF channel assignments in the Connecticut River Valley, including Springfield, Hartford, New Haven, and New Britain, which would be destroyed by additional signal importation, citing *Triangle Publications, Inc.*, FCC 60-920, 29 FCC 315, *aff'd.*, 291 F. 2d 342 (D.C. Cir. 1961); FCC 64-692, 37 FCC 307; (c) syndicated program exclusivity for WWLP and WHYN-TV, pursuant to Section 76.151 of the Commission's Rules (as granted in the Commission's previous de-

[1] WHYN is also seeking reconsideration of the Commission's action in *Spectrum Cable Systems, Inc.*, FCC 73-348, 40 FCC 2d 467, which granted a construction permit in the Cable Television Relay Service (CPCAR-342). Since WHYN has not addressed its arguments to the issues raised in that opinion, this portion of its petition will be denied.

cision), would afford little relief to these stations because they would not be entitled to protection vis-a-vis the local Hartford-New Haven-New Britain-Waterbury signals. Accordingly, the Springfield stations and the Hartford-New Haven stations would compete for syndicated programs, and the Springfield stations would certainly lose in any competition with the larger Hartford-New Haven stations; (d) the authorization of carriage of WWLP and WHNB–TV, New Britain, Connecticut, both NBC affiliates, on the Spectrum systems puts these stations in direct competition. Since both stations are of equal priority, no network program exclusivity is required, and either station may lose its network affiliation; (e) the carriage of Boston Bruins hockey games via WSBK–TV, Boston, Massachusetts, on the Spectrum systems may result in significant economic injury to the local minor league team; and (f) carriage of news programs on other NBC affiliates may necessitate the rearranging of WWLP's news schedule, thereby disrupting service to the public.

3. WHYN argues that the Commission has failed to address itself to WHYN's central point, namely that Springfield cannot economically support the "flood of signals" which will pour into the heart of WHYN's market under Section 76.61(f) of the Rules.[2] It reiterates that the Commission intended Section 76.61(f) to apply only where the larger market overlaps the fringe of the smaller market. But in the subject cases, the smaller Springfield market "is significantly overlapped" by the major markets of Boston and Hartford and, therefore, Section 76.61(f) should not be applied, and the carriage rules for smaller television markets should govern.

4. WWLP's arguments are rejected for the following reasons: (a) in our previous decision, we set forth the standard we expect television stations to follow to persuade us to depart from our "go-no-go" cable television policy. WWLP has failed to meet this standard. The statement that our rules will permit additional signal carriage in WWLP's service area does not alone constitute proof of significant adverse financial impact. WWLP has failed to submit data showing the likelihood of financial injury as a direct consequence of Spectrum's proposal; (b) *Triangle Publications, Inc., supra*, establishes the Commission's concern for the balance of UHF and VHF channel assignments in the Connecticut River Valley. Our cable rules similarly reflect this concern and permit cable television operation in this area in a manner which we anticipate will not damage this balance. WWLP has presented no evidence to the contrary; (c) the syndicated program exclusivity rules are intended to provide protection for local stations vis-a-vis distant imported stations. The rules are not meant to protect a local station, like WWLP, from other local market signals; (d), (e), (f) these allegations are speculative, unsupported by evidence, and are accordingly rejected.

5. WHYN's argument is similarly rejected. WHYN's petition falls far short of the standards we require to permit an exception to our carriage rules. Although we stated in the *Cable Television Report and*

[2] Section 76.61(f) provides that if a system is located in both a first fifty market and a smaller television market, the carriage rules of the first fifty markets apply. The subject communities are located in the Hartford-New Haven-New Britain-Waterbury market (#19) and the Springfield market (a smaller television market).

Order, FCC 72–108, 36 FCC 2d 141, 176 n. 48, that Section 76.61(f) of the Rules is usually applicable where the larger market overlaps the fringe of the smaller market. WHYN's unsupported statement that the Springfield market is "significantly" overlapped by the major markets of Boston and Hartford, unaccompanied by evidence of probable financial injury, is insufficient to persuade us to depart from normal application of the carriage rules. We further disagree with WHYN's characterization that our decision will permit a "flood of signals" in the subject areas. We have authorized Spectrum to import only two distant signals, WSBK–TV, Boston, and WGBY–TV, Cambridge, Massachusetts. The other signals authorized are market signals.

In view of the foregoing, the Commission finds that reconsideration of its actions in *Spectrum Cable System, Inc.*, FCC 73–257, 40 FCC 2d 1019, and FCC 73–348, 40 FCC 2d 467, would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Reconsideration" filed April 13, 1973, by Springfield Television Broadcasting Corporation, licensee of Television Broadcast Station WWLP, Springfield, Massachusetts, IS DENIED.

IT IS FURTHER ORDERED, That the "Petition for Reconsideration" filed April 13, 1973, by The WHYN Stations Corporation, licensee of Station WHYN–TV, Springfield, Massachusetts, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to STERN COMMUNITY LAW FIRM, WASHINGTON, D.C. Concerning Request for Information Under Freedom of Information Act	

JANUARY 16, 1974.

MR. TRACY A. WESTEN, DIRECTOR,
STERN COMMUNITY LAW FIRM,
2005 L Street, N.W.,
Washington, D.C. 20036

DEAR MR. WESTEN: This is in reply to your request of September 4, 1973 for (a) resumes or job applications submitted by attorney applicants to the Commission from June 1, 1972 to June 1, 1973; (b) resumes for job applications of those receiving offers to begin work on or after June 1, 1973; and (c) resumes or job applications of persons accepting such offers. Acting under the Congressional mandate that in matters of this kind the public's right to governmental information should be balanced against the protection of an individual's private affairs from unnecessary public scrutiny, I have concluded that the materials you seek should not be released.

Section 552(b)(6) of the Freedom of Information Act, 5 U.S.C. 552(b)(6), exempts from mandatory disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." [1] The legislative history of the exemption and the leading judicial decision interpreting it—*Getman* v. *N.L.R.B.*, 450 F. 670 (D.C. Cir. 1971)—indicate that a balance must be struck between two competing interests: protection of an individual's private and personal affairs from unnecessary public scrutiny versus protection of the public's right to governmental information. The *Getman* court observed (at page 675) that the "real thrust of Exemption 6 is to guard against unnecessary disclosure of files . . . which would contain 'intimate details' of a 'highly personal' nature." [2]

[1] Section 0.457(f) of the FCC Rules, 47 CFR 0.457(f), partially implements the exemption by providing, *inter alia*, that neither the official personnel folders nor other Commission records containing "private, personal or financial information concerning particular employees" will be made available for public inspection.

[2] *Getman* reached its result of disclosure chiefly because the information sought was not, in fact, either intimate or highly personal. Two law professors studying N.L.R.B. elections sought only the names and addresses of certain employees eligible to vote in a union election. From these, a relatively small sample of individuals were to be contacted and asked to consent to interviews. The court reasoned that although a limited number of employees would suffer some invasion of their privacy by losing anonymity and receiving interview requests, the intrusion was minimal because release of information beyond name and address depended entirely on the consent of the employee.

That the information you seek contains many such "intimate details" cannot be disputed. For your reference I have enclosed a Standard Form 171, the application completed by all candidates for attorney positions. Please note particularly lines 19, 20, 27, 28, 29, 30, 31, 32 and 33.[3]

Line 19 asks among other things whether the applicant has been discharged from the military "under other than honorable conditions." We feel that public disclosure of such information would serve no purpose beyond embarrassment or harassment.

Line 20 requires answers to quite personal employment-connected queries: 1) whether inquiry may be made of the applicant's present employer concerning character, qualifications and employment; 2) earnings, and 3) applicant's reason for wishing to leave. While such facts are relevant to prospective employment, their public value is questionable at best and we should be reluctant to divulge them for any but the most compelling of reasons.

Lines 27 and 28 ask whether the applicant was ever a member of the Communist Party or any organization seeking forceful or violent overthrow of the United States government.

Line 29 concerns illnesses such as epilepsy, nervous breakdown or tuberculosis. Many still regard these conditions very sensitively and, while potential employers need to know of them, the public's right is questionable at best.

Lines 30 and 31 ask whether in the past five years applicant has been fired from a job or quit on notice of imminent dismissal. All the above-mentioned reasons against disclosure apply here as well.

Line 32 concerns previous convictions or collateral forfeitures, line 33 service courts-martial. Again, as perspective employers we think we should know of such occurrences. But public disclosure would only embarrass applicants and incline them to concealment, or discourage applications from qualified candidates who may in the past have made an error in judgment.

Moreover, line 37—which provides additional space for detailed answers—might contain personal data of an intimate nature if used to extend answers begun on any of the lines cited above.

The court in the previously cited *Getman* case also chose, in balancing rights of privacy and disclosure, to weigh the purposes for which information was sought, the likelihood that the data would be handled with competence and care, the quality of the study's design and the expertise of its investigators, and the availability of the information from other sources.[4] None of these considerations is discussed in your letter of September 4th. In any event, evaluation of the data you seek would not be helpful in answering the question you wish to resolve.

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[3] The line numbers refer to the most recent (9/71) edition of Form 171. An earlier edition (7/68) remains in use. Its comparable line numbers are 23, 18, 25, 26, 27, 28, 29 and 30.

[4] 450 F. 2d at 675–77. The importance of purpose and use of personal data is suggested by the instructions appended to the Form 171: "All requested information must be furnished. The information you give will be used to determine your qualifications for employment." This language suggests that the information submitted will be used for a limited purpose, and it would be reasonable to infer an expectation on the part of the applicant reading the instructions that his responses would not be put to any other use by the FCC, nor any use at all by persons outside this agency, with the possible exception of the Civil Service Commission.

It should also be noted that disclosing these documents to you, and through you to the public, could seriously impair the ability of the Commission to recruit attorneys who might understandably object to such dissemination of personal information. Nor would these unfortunate effects be confined to this agency alone.

Accordingly, since the materials you seek contain intimate details of a highly personal nature, and since the invasion of privacy represented by their disclosure is clearly unwarranted on the record you have submitted, it is my view that your request should be denied. You may, of course, seek review of my action pursuant to the procedure specified in Section 0.461(d)(2) of the Rules, 47 CFR 0.461(d)(2).

Sincerely yours,

JOHN M. TORBAT, *Executive Director.*

Enclosure:

F.C.C. 74-78

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Public Notice
CONCERNING THE BROADCAST OF INFORMATION BY MEANS OF "SUBLIMINAL PERCEPTION" TECHNIQUES

January 24, 1974

BROADCAST OF INFORMATION BY MEANS OF "SUBLIMINAL PERCEPTION" TECHNIQUES

Shortly before Christmas 1973 the Commission received a few complaints that some television stations had broadcast an advertisement which contained a statement of such short duration that most viewers were unaware of it—at least, consciously unaware of it. The message broadcast in this manner was "Get It," referring to the product advertised in the commercial. Since this statement could not be consciously perceived by most persons, it involved use of the "subliminal perception" technique which was the subject of Commission inquiry years ago.

In a Public Notice dated November 27, 1957, the Commission noted that the Television Code Board of the NAB (then the NARTB) had asked its subscribers to refer any proposals for television use of subliminal perception to the Board. In that Notice, the Commission stated in part:

> Deep concern has been expressed by members of the public, the broadcast industry and leaders in public life with respect to the use of "subliminal perception" advertising by television stations. That this concern has a firm basis is evidenced by the action of the NARTB and the caution with which television licensees have approached the technique. Obviously, it is a matter which vitally concerns the public interest. Accordingly, the Commission's study is being directed toward determining what appropriate steps, if any, should be taken by the Commission with respect to the possible use of the above technique by the television licensees. The posture of the problem is such that the public interest is not in immediate danger of being adversely affected. Ample proof has been given of the recognition by television licensees of their responsibilities and obligation to operate their stations in the public interest.

At that time the Commission had no information that any television station had made use of subliminal perception techniques, except on an experimental basis and for scientific purposes, and after 1957 no instance of telecasting of such messages came to the attention of the Commission until the 1973 pre-Christmas advertising campaign, in

which an advertising agency distributed spots involving the "Get It" statement.

Commission inquiry revealed that the NAB TV Code Authority had learned of the use of the subliminal messages in late November and had received a statement from the advertising agency that it was dispatching telegrams to all stations to which the advertisements had been sent, informing them of the subliminal statements, authorizing the stations to delete the statements from the spots and informing the stations that film prints which did not contain the "Get It" flashes would be sent to them. (The Television Code now prohibits use of "Any technique whereby an attempt is made to convey information to the viewer by transmitting messages below the threshold of normal awareness . . .")

Despite the Code Authority's action, some stations apparently continued to broadcast spots containing the "Get It" statement, and some state they have no record of having received the telegram from the agency.

We believe that use of subliminal perception is inconsistent with the obligations of a licensee, and therefore we take this occasion to make clear that broadcasts employing such techniques are contrary to the public interest. Whether effective or not, such broadcasts clearly are intended to be deceptive.

In closing, we note that the Federal Trade Commission also received a complaint about the pre-Christmas announcements, and that it is making inquiry into the matter in light of the laws that it administers.

Action by the Commission January 23, 1974. Commissioners Burch (Chairman), Lee, Reid, Wiley and Hooks.

Sent to all broadcast licensees.

F.C.C. 74-53

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of: WEAU, INC., EAU CLAIRE, WIS. For Renewal of License for Station WEAU-TV	Docket No. 19927 File No. BRCT-129

ORDER AND NOTICE OF APPARENT LIABILITY

(Adopted: January 16, 1974; Released: January 24, 1974)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. The Commission has before it for consideration (a) the captioned application and (b) its inquiries into the operation of Station WEAU-TV, Eau Claire, Wisconsin.

2. Information before the Commission raises serious questions as to whether the applicant possesses the qualifications to be or to remain a licensee of the Commission. In view of these questions, we are unable to find that a grant of the renewal application would serve the public interest, convenience and necessity, and must, therefore, designate the application for hearing.

3. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the application IS DESIGNATED FOR HEARING, at a time and place to be specified in a subsequent order, upon the following issues:

(a) To determine whether, and, if so, the extent to which the applicant engaged in fraudulent billing practices or failed to exercise reasonable diligence to see that its agents and employees did not engage in fraudulent billing practices in the operation of Station WEAU-TV, in violation of Section 73.1205 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the preceding issue, whether the licensee has the requisite qualifications to be or to remain a licensee of the Commission and whether a grant of the application would serve the public interest, convenience and necessity.

4. IT IS FURTHER ORDERED, That if it is determined that the hearing record does not warrant an order denying the captioned application for renewal of license of Station WEAU-TV, it shall also be determined whether the applicant has repeatedly or willfully violated Section 73.1205 of the Commission's Rules.[1] If so, it shall also be determined whether an Order of Forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, in the amount of $10,000 or some lesser amount should be issued for violations which

[1] See Bill of Particulars for specific dates and details of each alleged violation.

occurred one year preceding the issuance of the Bill of Particulars in this matter.

5. IT IS FURTHER ORDERED, That this document constitutes a Notice of Apparent Liability for a forfeiture for violation of Section 73.1205 of the Commission's Rules. The Commission has determined that, in every case designated for hearing involving revocation or denial of a license renewal application for alleged violations which also come within the purview of Section 503(b) of the Act, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine or standard one, we *stress* that inclusion of this Notice is not to be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

6. IT IS FURTHER ORDERED, That the Chief of the Broadcast Bureau shall serve upon the captioned applicant, within thirty (30) days of the release of this document, a Bill of Particulars with respect to issue (a).

7. IT IS FURTHER ORDERED, That the Broadcast Bureau proceed with the initial presentation of the evidence with respect to issue (a), and that the applicant then proceed with its evidence and have the burden of establishing that it possesses the requisite qualifications to be and to remain a licensee of the Commission and that a grant of its application would serve the public interest, convenience and necessity.

8. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the applicant, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issue specified in this Order.

9. IT IS FURTHER ORDERED, That the applicant herein, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, shall give notice of the hearing within the time and in the manner prescribed in such Rule and shall advise the Commission thereof as required by Section 1.594(g) of the Rules.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this Order by Certified Mail—Return Receipt Requested to WEAU, Inc., and the Post Corporation.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 74–50

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
ROBERT E. WOODRUFF
Concerning Application of the Wasque
Corp. for a Construction Permit

JANUARY 16, 1974.

MR. ROBERT E. WOODRUFF,
VINEYARD CONSERVATION SOCIETY, INC., R.F.D.,
Vineyard Haven, Mass. 02568

DEAR MR. WOODRUFF: This is in reference to your letter of August 6, 1973, concerning the application, File No. BPH–8027, of the Wasque Corporation for a construction permit for a new FM broadcast station in Tisbury, Massachusetts.

In your letter, you state that while you are in basic agreement with the usefulness of an FM station on the island, a grant of the application as proposed will result in an increase in the number of tourists to an area which you feel is presently receiving too much publicity and two many tourists. You therefore suggest the use of a directional antenna to prevent "leakage" to the mainland.

The Commission's rules permit the use of directional antennas for purposes other than establishing stations at less than specified minimum distances between transmitter sites. The rules for directional antennas do not permit a ratio of more than 15 decibels between maximum and minimum radiated power. Even with the use of a directional antenna here, the signal of the station would not be eliminated from the mainland, although it would be reduced in intensity. Had the applicant submitted a proposal for a directional antenna, it would have have received consideration by the Commission. The proposal as presented in the application, however, provides a service to a greater number of people than would be possible with the use of a directional antenna and therefore results in a more efficient use of the channel.

The Commission has found the applicant legally, technically, and financially qualified and has this date granted the application with the facilities as proposed, subject to whatever action the Commission takes concerning rule making petition (RM–2158).

Chairman Burch was absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*